

JACKSONVILLE TRANSPORTATION AUTHORITY

**SOLICITATION AND AWARD PROTESTS RULE
(RULE NO.004)**

DATE OF ADOPTION: January 31, 2014

LAST REVISED: April 28, 2016

SOLICITATION AND AWARD PROTESTS

I. Purpose and Scope.

This rule provides procedures for the resolution of protests arising from Solicitations or Awards.

II. Definitions.

All terms shall have the same definition as set forth in Procurement Rule No. 002. In addition, for purposes of this rule, the following terms mean:

- (a) "Award" means the award of a Contract in response to a Solicitation to a Contractor (or Contractors, if applicable), which shall be deemed to occur only upon the execution and delivery of a written Contract to a Contractor (or Contractors, if applicable) by JTA, and such term applies to any method of Procurement.
- (b) "Decision or Intended Decision" means:
 - (1) The contents of a Solicitation, including addenda;
 - (2) Ranking of proposers by the Evaluation Committee or Procurement Review Committee, if applicable;
 - (3) A determination that a specified Procurement can be made only from a single source;
 - (4) Rejection of a response or all responses to a Solicitation; or
 - (5) Intention to award a contract as indicated by a posted bid tabulation or other written notice.
- (c) "Electronic posting" means the inclusion of information on the JTA's website.

III. Notice of Protest Rights and Protest Procedures.

- (a) JTA may provide notice of a Decision or Intended Decision concerning a Solicitation or Contract Award by (1) physical posting at the JTA's administrative offices (2) electronic posting or (3) U.S. mail or other delivery to the affected person or entity. This notice shall contain the following statement: "Failure to file a protest by 5:00 p.m. on the fifth (5) business day after the Decision or Intended Decision (for Contract Award protests) or prior to five (5) business days before the bid opening date and time (for protests relating to the contents of a Solicitation), or failure to post the bond or other security required under JTA's Solicitation and Award Protest Rule within the time allowed for filing a bond shall constitute a waiver of proceedings under JTA's Solicitation and Award Protest Rule." If the notice advises of the bond requirement but a bond (or authorized alternate) is not posted when required, the JTA may summarily reject the protest without considering its contents.

- (b) Solicitation Contents. Any person who wishes to protest the contents of a Solicitation, including addenda, shall submit to the JTA's Senior Manager, Contracts, and Procurement and Inventory a written protest no less than five (5) business days before the bid, proposal or qualifications due date and time. Failure to submit a timely protest shall constitute a waiver of proceedings under this rule. The time period set forth herein is not extended by service of the protest by mail.
- (c) Contract Award. Any person who is adversely affected by the JTA Decision or Intended Decision concerning a Contract Award shall submit to the JTA's Senior Manager, Contracts, Procurement and Inventory a written protest, no later than 5:00 p.m. on the fifth (5) business day after the first posting of the notice of Decision or Intended Decision. Failure to file a notice of protest shall constitute a waiver of proceedings under this rule. The time period is not extended by service of the protest by mail.
- (d) The protest shall clearly identify the Solicitation being challenged and shall state with particularity the facts and law upon which the protest is based and include all documents that are necessary to resolve the protest. The bond requirements are set forth in section IX below.
- (e) Upon receipt of a timely protest, the JTA shall suspend the Solicitation or Contract Award process until the subject of the protest is resolved by operation of this Rule or by final action, unless the CEO or Vice President of Administration sets forth in writing particular facts and circumstances which require the continuance of the Solicitation or Contract Award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare, or other exigent circumstances, including in order to avoid a substantial loss of funding to the JTA.

IV. Right to Resolve Protest.

Any protest may be resolved by mutual agreement of the parties at any time. When a protest is resolved to the satisfaction of the Vice President or Administration, the protesting party shall submit a written request to withdraw the protest.

V. Standing to Protest.

The JTA will disregard any protest of an Award when the protesting party did not submit a response to the Solicitation. Subcontractors do not have standing to protest and any attempt to protest will be disregarded.

VI. Hearings.

The JTA will publicly announce the hearing date and time, which shall occur no later than thirty (30) calendar days after the receipt of the protest. The hearing shall be held at the JTA's administrative offices, with the CEO or designee presiding. All relevant JTA staff and general counsel shall attend the hearing. All potentially affected parties will be given the opportunity to be heard at the hearing. Not every business that has responded to a Solicitation is an affected party for this purpose. The presiding officer shall conduct the hearing in a reasonable manner with all interested parties having a full and fair opportunity

to be heard. Attendance via telephone may be allowed, in the discretion of the presiding officer. Reasonable time limits may be imposed at the discretion of the presiding officer. The presentations must be limited to or reasonably related to the basis set forth in the written protest. The presiding officer will document the final decision in writing within five (5) business days of the hearing date and will provide a copy to all parties that attended the hearing. The written decision shall constitute final agency action.

VII. Time Computation.

In computing any period of time prescribed or allowed under this rule, a business day is a day which is neither a Saturday, Sunday or legal holiday observed by the State of Florida. The day of the act from which the designated time period begins to run shall not be included when computing any period of time. The last day of the period shall be included unless it is a Saturday, Sunday or holiday observed by the State of Florida. A period for filing shall not be extended due to service by mail. Facsimiles will not be considered. Any mail or deliveries received after 5:00 p.m. will be considered submitted as of the next business day.

VIII. Protest to Federal Transit Administration.

- (a) A protestor adversely affected by a final decision of JTA governed by the below-noted circular, may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1F, as currently in effect as of the date of JTA's decision on the protest.
- (b) Under the provision of the FTA Circular, FTA will only review protests regarding the alleged failure of JTA to have written protest procedures or the alleged failure to have followed such protest procedures or the alleged failure to review a complaint or protest.
- (c) In accordance with the FTA Circular, such protest must be filed no later than 5 business days after the protestor knew or should have known of JTA's alleged failure listed above.
- (d) Under the following conditions, JTA may proceed with the procurement in spite of a pending protest to the FTA:
 - (i) The items to be procured are urgently required;
 - (ii) Delivery or performance will be unduly delayed by failure to make the award promptly; or
 - (iii) Failure to make prompt award will otherwise cause undue harm to JTA or the Federal Government.

IX. Bond.

- (a) Any person who protests a Decision or Intended Decision shall post with the JTA, at the time of filing the written protest, a bond (either cash, cash equivalent, or secured by an irrevocable letter of credit) payable to the JTA in the following amounts:

- (i) For an action protesting a Solicitation, the bond shall be \$5,000.
 - (ii) For an action protesting a bid, proposal or qualifications rejection or Contract Award, the bond shall be equal to 1 percent of the lowest bid submitted (up to \$25,000) or \$5,000, whichever is greater.
- (b) The bond required by this section shall be conditioned upon the payment of all costs which may be adjudged against the person filing the protest in the administrative hearing in which the action is brought and any subsequent appellate court proceeding. If, after completion of the administrative hearing process and any appellate court proceedings, JTA prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the person filing the protest, the bond shall be returned to him or her. If the person filing the protest prevails, he or she shall recover from the JTA all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. The entire amount of the bond shall be forfeited if the hearing officer determines that a protest was filed for a frivolous or improper purpose, including, but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost for JTA or parties.
- (c) The protest bond shall be in substantially the following form. The JTA will disregard any protest that does not use this form:

**JACKSONVILLE TRANSPORTATION AUTHORITY
PROCUREMENT PROTEST BOND**

Bond Number: _____
Contract Number: _____

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____ a (mark one) corporation, partnership, proprietorship, organized and existing under the laws of the State of _____, and having its principal place of business at _____, as PRINCIPAL; and _____, a surety company, organized under the laws of the State of _____, and duly authorized to do business in the State of Florida, whose principal place of business is _____, as SURETY, are held and firmly bound unto the JACKSONVILLE TRANSPORTATION AUTHORITY, (JTA), as OBLIGEE, in the amount of \$_____ for the payment of which sum we, as Principal and Surety, bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THIS BOND is issued under the provisions of the JTA SOLICITATION AND AWARD PROTEST RULE. The above-named Principal has initiated an administrative protest regarding the Obligee's decision or intended decision pertaining to (mark one) Bid Number _____ JTA's request for approval of an exceptional purchase of _____ submitted by _____. Said protest is conditioned upon the posting of a bond at the time of filing the formal written protest.

NOW, THEREFORE, the condition of this Bond is that if the Principal, after the administrative hearing process and/or any appellate court proceedings regarding the protest, shall satisfy all costs and charges allowed by final order and/or judgment, and interest thereon, in the event the Obligee prevails, then the obligation shall be null and void; otherwise it shall remain in full force and effect. The Obligee may bring an action in a court of competent jurisdiction on this bond for the amount of such liability, including all costs and attorneys' fees.

Principal: _____
By: _____
Title: _____
(CORPORATE SEAL)

Attest: _____
By: _____

Surety: _____
By: _____
Title: _____
(CORPORATE SEAL)

Florida Resident Agent: _____

(Note: Power of Attorney showing authority of Surety's agent or Attorney in Fact must be attached). Bonds must be countersigned by an agent licensed in Florida. A cashier's check or money order may be used in lieu of a bond.