

TITLE: <b>Bid Protest Policy and Procedure</b>		PROCEDURE NO. <b>Purchasing 3.0</b>
ISSUE DATE: <b>April 2009</b>	PREPARED BY: <b>Alexa Gangemi</b>	APPROVED BY: <b>Richard Davey</b>

GENERAL

1. The General Manager or his/her designee is responsible for the interpretation and administration of this policy.
2. Nothing stated in this policy creates a contractual commitment of any kind. MBCR reserves the right to modify the procedures set forth below in whatever manner it deems appropriate.
3. This policy supersedes all previous versions of this policy.

PURPOSE

In response to Federal Transit Administration (FTA) Circular 4220.1F, "Third Party Contracting Guidelines," MBCR's Bid Protest Policy and Procedure has been finalized to address allowable protests or objections regarding the procurement process.

SCOPE

Protest procedures are provided for potential bidders who may be considered for work involving governmental funds as required by FTA C 4220.1F.

Procedure:

Interested parties aggrieved by a solicitation or the award of any resulting contract may file a written notice of protest to MBCR. This protest must be received eight (8) calendar days prior to the deadline set for receipt of Proposals. Protests based on other circumstances shall be submitted within five (5) calendar days after the allegedly aggrieved person or party is notified of contract award. Thereafter, such issues are deemed waived by all interested parties.

The protest shall contain the following information at a minimum:

- Name of the Protester
- The relevant solicitation or contract
- Grounds for the protest and supporting documentation
- Relief sought



**NAME OF DEPARTMENT  
POLICIES & PROCEDURES**

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Protests shall be addressed to:

Robert C Brown  
 Manager Material Control Procurement  
 Massachusetts Bay Commuter Railroad  
 70 R Third Avenue  
 Somerville, MA 02143

As required in FTA C 4220.1F, MBCR and/or the Grantee will notify the FTA in a timely manner, of the receipt of the protest.

If any information is omitted or incomplete, MBCR will notify the protester in writing. The required information must be provided within (3) business days if the protest is to be further considered.

All documents received by the Manager Material Control Procurement shall be stamped with the date and time received and logged into the protest file folder.

The protest and any supporting documentation will be reviewed by the General Manager or assigned designee. The General Manager may receive evidence and legal arguments from any interested party, but shall not be bound by the rules of evidence nor formal procedure. Unless otherwise directed by the General Manager, issues will be judged on the basis of written evidence and written arguments.

If an informal conference has been requested, the General Manager shall give the protester written notice of the place, location and time of the informal conference, which shall be within a reasonable time frame of such notice. Any information to be considered in the protest decision must be submitted in writing within twenty-four (24) hours after the conference.

MBCR shall advise all competitors that a protest has been filed.

The MBCR designee shall issue a written decision to the protesting party within ten (10) business days of the receipt of the protest including the submission of additional written information submitted to MBCR under these rules as part of the protest process, and shall advise the Grantee, the Board of Directors and other interested parties. Such decision is final unless a request for appeal is filed.

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An appeal may be requested in writing within three (3) business days of receipt of the decision. Appeals will only be considered when:

1. Previously unknown data becomes available
2. An error of law or regulation is believed to have occurred

The request shall state the basis for the appeal along with supporting documentation.

The General Manager, in the manner provided above for an initial protest, shall consider and decide the request for appeal and shall issue a written decision to protester within ten (10) business days notifying protester of the decision and addressing all substantive issues raised in the appeal request. Such a decision is final, and the FTA will be notified of the decision.

A protest appeal may be made to the FTA in accordance with the procedure detailed in FTA C 4220.1F Chapter VII Section 1 (b) only after all MBCR's protest procedures have been exhausted.

FTA will only entertain a protest that alleges:

1. The MBCR failed to have or to adhere to its protest procedures, or failed to review a complaint or protest; or
2. Violations of Federal law or regulation.

If the FTA agrees to review a protest appeal, their decision will be considered final.

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection

Approved by: \_\_\_\_\_ Date \_\_\_\_\_  
 General Manager MBCR  
 \_\_\_\_\_ Date \_\_\_\_\_  
 Chief Financial Officer