

## **PROCUREMENT PROTEST PROCEDURE**

### **Protest in Writing**

An unsuccessful bidder/offeror/quoter may protest the procurement process by following this procedure. The protest must be made within five business days of the date the basis of the protest to the procurement process became known or should have become known to the protester, whichever is earlier. The protest must be submitted in writing to CAPCOG, to the attention of the contact person, and identify and be signed by the protester. The protest must identify the bid/proposal/quote or contract award or both being protested and must specifically describe the basis for the protest, including, if relevant, the qualifications of the winning bidder/offeror/quoter; the suitability of the supplies, equipment, or services offered; alleged irregularities in the procurement process; citation to each law or policy allegedly violated; and all additional, pertinent information regarding the procurement process.

### **Action Following Protest**

Upon receipt of the written protest, CAPCOG shall furnish a copy of the protest to all of the other bidders/offerors/quoters and suspend the procurement process until the protest is resolved. CAPCOG shall also suspend award of the contract, or its performance if already awarded, until the protest is resolved unless (1) there is a bona fide emergency justifying the immediate award or the start of performance or completion of the contract; or (2) federal or state law requires award or completion of the contract by a particular date.

### **Informal Resolution of Protest**

Upon receipt of the written protest, the contact person shall communicate in writing with the protester within three business days after receipt and attempt to resolve the protest informally. If the protest cannot be informally resolved between the contact person and protester within three business days after the contact person's first written communication with the protester, the protester may request the Executive Director to decide the protest. The request must be in writing and be received by the Executive Director within three business days after the last written communication between the contact person and protester. The contact person shall summarize the efforts to resolve the protest, and recommend a decision on the protest, in a memorandum to the Executive Director, which shall be marked "Confidential – Intragency Memorandum" on each page, and forward the complete procurement file to the Executive Director.

### **Decision by Executive Director on Protest**

Upon receipt of the request, the Executive Director, or her or his designee appointed in writing to act for the Executive Director on the protest, shall decide the protest. The Executive Director (or designee) shall review the entire procurement file and may

interview CAPCOG employees and communicate in writing with the protester and others with information about the procurement process and contract award (if made). The Executive Director shall decide the protest within 10 business days following receipt of the request. The decision must be in writing, signed by the Executive Director, and a copy of the decision furnished to the protester and to all of the other bidders/offerors/quoters for the procurement. The Executive Director's decision on the protest is final unless the protestor is permitted to appeal to the Executive Committee's Procurement Protest Appeal Subcommittee.

### **Appeal to Executive Committee's Appeal Subcommittee**

The Executive Director may permit appeal of the Executive Director's decision denying the protest to the Executive Committee's Procurement Protest Appeal Subcommittee if the protester requests the appeal in writing and the request is received by the Executive Director within five business days following the date of the decision. In deciding whether to permit the appeal, the Executive Director shall consider the dollar amount of the bid/proposal/quote or contract award and the cost to CAPCOG of delaying the award or performance of the contract; the protester's good faith in requesting the appeal; the seriousness of the alleged violation of CAPCOG's *Procurement Policy* or applicable law; the novelty of the protest; and any other factors relevant to the Executive Director's decision denying the protest. The Executive Director's decision to permit or reject appeal to the Subcommittee must be in writing, made within five business days following receipt of the protestor's request, and shall be furnished to the protester and to all of the other bidders/offerors/quoters for the procurement.

The decision of the Executive Committee's Procurement Protest Appeal Subcommittee on the appeal is final unless the protester files suit challenging the decision, in a court of competent jurisdiction in Travis County, Texas, within 15 business days following the date of the decision.

### **Action Following Final Decision on Protest**

If the Executive Director denies the protest, and there is no timely appeal or court challenge, the procurement process shall resume and the contract awarded or the award confirmed if already made before the protest was received. If the Executive Director sustains the protest, or the appeal or court challenge is successful, the Executive Committee shall revoke the contract award (if made), reject all the bids/proposals/quotes, and solicit new bids/proposals/quotes if in CAPCOG's best interest.

After the protest is finally resolved, CAPCOG shall notify the grantor agency, if any, of the details of the protest.