

BWATC Protest Procedures

Definitions for Purposes of This Section

- **Days:** Refers to the working days of the Blue Water Area Transportation Commission (BWATC).
- **Interested Party:** Any person who:
 1. Is an actual or prospective proposer in the procurement involved.
 2. Has a direct economic interest affected by the award or non-award of the contract.

Note: The Federal Transit Administration (FTA) will be notified by BWATC of all formal, written protests when FTA funds are involved.

A. Protest Consideration

BWATC will hear and consider bona fide protests regarding its procurement actions. While most protests will be evaluated and resolved by BWATC, the primary concern remains the timely procurement of necessary capital equipment, supplies, or services. BWATC will not allow frivolous or vexatious protests to delay the procurement process.

Interested parties are encouraged to exhaust all informal resolution methods before filing a formal protest. BWATC reserves the right to consider the good faith efforts of the protestor in attempting informal resolution.

B. Submission of Protest

Any interested party may file a protest with BWATC on the basis that BWATC has failed to comply with applicable Federal or State regulations or its own procurement process. The protest must be filed in accordance with the timing requirements outlined in Section C and must include:

- Protestor's name, phone number, email, and address.
- The RFP and proposed contract number.
- A statement outlining the grounds for the protest, the relief requested, and the specific Federal or State law or BWATC procedure alleged to have been violated. Supporting documentation should be included.

Protests should be submitted to:
BWATC Procurement Department
2021 Lapeer Avenue
Port Huron, MI 48060

C. Types of Protests and Timing

The timeliness of a protest depends on its type:

1. Protest Regarding Proposal

- Must be filed **no later than five (5) business days before the proposal due date.**
- Protests after this date will not be considered.
- Includes claims of exclusionary/discriminatory specifications, challenges to the basis of award, or violations of Federal/State laws or BWATC's procurement process.

2. Protest Regarding Requirements and Responsiveness

- Must be filed **within five (5) business days of receiving a notification of non-responsiveness.**
- Includes challenges to BWATC's determination of responsiveness, proposer responsibility, or compliance with laws and procurement processes.

3. Protest Regarding Non-Award Notification

- Must be filed **within five (5) business days of receiving a non-award notification.**
 - Will only be considered if the protestor demonstrates that:
 - The awarded party fraudulently represented itself as a responsible proposer, or
 - BWATC violated Federal or State regulations or its procurement process.
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D. BWATC Response to Protests

Upon receipt of a timely protest, BWATC will notify the protestor and may request additional information. A meeting may be scheduled to discuss the protest.

1. Handling of Protest Types

a) Proposal Protests

- Proposal opening will be **postponed until resolution.**
- No additional proposals will be accepted during postponement.

- If the protest involves claims of restrictive or exclusionary specifications, BWATC will evaluate its necessity versus its impact on competition.

b) Requirements & Responsiveness Protests

- Evaluation of all proposals **will be suspended** if BWATC finds reasonable doubt regarding proposal responsiveness, proposer responsibility, or compliance with laws and procedures.

c) Non-Award Notification Protests

- Contract award **will be suspended** if a prima facie case of fraud or procedural violations is established.

2. BWATC Decisions

BWATC generally suspends the procurement process when a bona fide protest is filed. However, BWATC may proceed under the following conditions:

- **Urgency:** The item is critically needed.
- **Frivolous/Vexatious Protest:** The protest lacks merit.
- **Undue Delay or Harm:** Suspension would cause unacceptable delays or harm.

After reviewing the protest, BWATC will issue a written decision based on provided information, meetings, and its own investigation. If the protest is upheld, corrective action may include:

- Re-proposal
- Revised evaluation
- Re-determination of award
- Contract termination

If denied, the suspension will be lifted, and the procurement process will continue.

E. FTA Protest Procedure

FTA reviews protests only if BWATC fails to have or follow protest procedures or fails to review a complaint. A protestor must exhaust all administrative remedies with BWATC before appealing to FTA.

- Appeals must be filed with the FTA regional or headquarters office **within five (5) working days** of the protestor knowing of the violation.
- Protests may be submitted under **FTA Circular 4220.1F** under certain circumstances.
- Violations of Federal law will be handled according to that law's complaint process.

