

BIDDING AND CONTRACT PROTEST PROCEDURES

The following protest procedures are the sole administrative remedy for protesting all RHA procurement actions.

Purpose

Disagreements over the award of a contract, referred to as protests, may occasionally arise between the RHA and an offeror. Usually, the protestor asserts that he/she should have received the contract award and alleges that the RHA did not conduct the competition appropriately. While protests are commonly referred to as “bid protests,” any type of contract award, including small purchase, competitive proposal, or sealed bid, may be protested by an interested party. The purpose of this process is to preserve the integrity and confidence in the RHA’s procurement operations.

“Interested party” means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

References

These procedures have been established in accordance with:

- 24 CFR 85.36 - Procurement,
- HUD Handbook 7460.8 REV 2 – Procurement Handbook for Public Housing Agencies dated 2/2007,
- HUD Form 5369 and 5369-B, and
- RHA Procurement Policy.

General

It is RHA policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

Bid Protest

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received in writing before the due date for the receipt of bids or proposals.

Award Protest

Any protest against the award of a contract must be received within ten (10) calendar days of the date provided on the written notice of contract award from RHA, or the protest will not be considered. All bid protests shall be in writing. Protests must be received by 4:00 pm on the tenth calendar day. If the tenth calendar day falls on a weekend or holiday, the tenth day will be considered the next business day.

Claims by a Contractor after Contract Award

All claims by a contractor relating to the performance of a contract he/she has been awarded and is performing services under shall be submitted in writing within ten days of the occurrence resulting in a protest. The contractor may request a conference on the claim. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

Procurement/Contract Protest Procedures***Designation of Protest Officials***

All protests shall be submitted to the Contracting Officer's designee, who shall issue a written decision on the matter. The Contracting Officer designee may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

A. All protests shall be sent by some form of certified mail or hand delivered to the:

RHA Purchasing Agent
675 West Main Street
Rochester, NY 14611

B. The RHA Contracting Officers designee will provide a written decision on the matter within twenty calendar days of receipt of the protest. If a final determination cannot be made within twenty days, a written notice will be provided to the protester with an estimated date that the decision should be made and a reason for the extension.

C. This decision will be final unless within five (5) business days of receipt of the written decision the protester appeals to the Contracting Officer. The appeal shall be in writing, sent via fax 585-697-7164 and certified mail, or by hand-delivery to the Purchasing Agent as stated above.

Appeals should contain a statement of the factual and legal grounds on which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered. A new protest or additional changes to the original protest will not be allowed within the appeal process.

The Contracting Officer will review the appeal, supporting documents, and the decision of the designee. The Contracting Officer will issue a written decision within ten (10) business days of receipt if feasible. The Contracting Officer may take any action or make any requests he or she deems necessary including extending the time to issue a decision in order to render a decision on the appeal. The decision of the Contracting Officer shall be conclusive and the final determination by RHA.

D. If the RHA provides a final determination that all possible steps have been exhausted to resolve the protest internally, then the protesting party will be responsible to notify RHA of their intent to proceed with a third party appeal process within five (5) business days of RHA's written notice (e.g., through mediation). The selection of the independent third party mediation and the cost arrangement of such services shall be mutually agreed upon in writing by both parties prior to commencing the process.

E. In accordance with **24 CFR 85.36(b)(12)(i) & (ii) HUD Review** - Review by HUD of a protest will be limited to:

1. Violations of Federal law or regulations. The protest should cite the specific Federal or HUD regulation that has been violated. Violations of State or local laws should be referred to the State or local entity having jurisdiction over such matters.
2. Violation of the RHA's protest procedures for failure to review a complaint or protest. The RHA shall submit a copy of the protest to the HUD Field Office having jurisdiction over the RHA.

HUD will refer any protests other than those specified above back to the RHA for action.

Procurement/Contract Protest Procedures***Contractor Claims***

Protestors are required to submit protests in writing, clearly stating the basis for their protest. Protests should include, at a minimum, the following information:

- A. Name, address, and phone number(s) of the protestor;
- B. Solicitation number and/or project title;
- C. A detailed statement of the basis for the protest;
- D. Supporting evidence or documents to substantiate any arguments; and
- E. The form of relief requested (e.g., reconsideration of their offer).

Remedial Action

If a protest is determined in favor of the protestor, RHA will take one of the following courses of action:

- A. For bid protests prior to the contract being awarded - The RHA may cancel the solicitation and rebid. RHA reserves the right to revise the bid specifications or proposed contract award.
- B. For contracts already awarded - The current contract may be terminated for convenience and either 1. the protester will be awarded the contract or 2. all offerors would be resolicited. This decision will be determined solely by RHA. For resoliciting bids, RHA may elect to revise the specifications or leave them as previously stated.

For emergencies or unusual and compelling circumstances, RHA will allow a contract to remain in place despite a successful protest in cases where there is a compelling need for the supplies or services. If the RHA determines, based on compelling circumstances such as an emergency or serious disruption of the RHA's operations, that termination or re-solicitation would not be in the best interest of the RHA. The RHA may allow the award to stand and pay the successful protestor costs associated with preparing the bid along with the cost of filing and pursuing the protest and other damages determined.

- C. For contractor claims on an awarded contract - Contractor claims shall be governed by the Changes clause in the form HUD-5370.

Denials

Any written decisions denying a protest or appeal will state RHA's decision and the basis for the denial. The notification shall apprise the protestor of any appeal rights in accordance with these procedures.

Documentation

The Contracting Officer or designee shall fully document the protest decision in writing in the contract file.