

## APPEAL PROCEDURES

### 1. APPEAL PRIOR TO BID OPENING

Any protests, prior to bid opening must be submitted in writing and received by the procuring agency at least five (5) calendar days prior to bid opening. This five (5) calendar day deadline may be waived by the procuring agency for good cause shown. The procuring agency's response shall be in writing and set forth the reasons for its response. The procuring agency will postmark its response no later than three (3) calendar days prior to bid opening, unless the three (3) calendar day deadline had been extended as above. A bidder may submit further documentation on an adverse decision by the procuring agency, but no new issues will be considered.

A bidder may seek KYTC review of the procuring agency's determination. Such review shall merely be considered oversight reconsideration and shall not constitute adjudication by KYTC with respect to the rights of the bidder. Requests for such review must be initiated by the bidder in writing by sending a letter to the procuring agency, with a copy to KYTC, requesting KYTC review. The letter must be received by the procuring agency and KYTC not less than five (5) calendar days before bid opening. Requests for review received less than five (5) calendar days before bid opening will not be considered. The procuring agency must immediately furnish KYTC a copy of all previous correspondence and other documentation pertaining to the bidder's request for review. In conducting its review, KYTC will consider the complaint letter and correspondence and documentation provided by the procuring agency, as well as any additional information obtained through KYTC's specific requests to the procuring agency, bidder, or other third party. KYTC will not substitute its judgment for that of the procuring agency, unless the matter specifically relates to state or federal laws, regulations or procedures.

Upon receipt of the letter requesting KYTC review, the procuring agency must immediately contact KYTC to determine if the bid opening should be postponed. If the bid opening is

postponed, the procuring agency must notify all prospective bidders who have been furnished a copy of the specifications that a request for review has been received and that the bid opening is postponed until KYTC has issued its decision. Upon receipt of KYTC's decision, the procuring agency must issue an appropriate addendum rescheduling the bid opening.

A request for review may be withdrawn by letter from the bidder to the procuring agency, with a copy to KYTC, received at any time before KYTC has issued its decision.

KYTC's decision on any request for review under these procedures is final, and no other request will be considered by KYTC. Said decision will be rendered by letter to the procuring agency, with a copy to the bidder, and will set forth the reasons for KYTC's decision.

## 2. APPEALS AFTER BID OPENING

Protests after bid opening will be considered only as to issues which were not apparent before bid opening. After bid opening no protests of specifications will be considered.

Any protest after bid opening, including a protest of contract award, must be submitted in writing and received by the procuring agency within five (5) calendar days of the action being protested. No other form of protest will be considered. After the time for protest of contract award has expired, these protest procedures will be considered to be inapplicable, and any disputes will be resolved by the procuring agency under contract provisions or other remedies, if available. Protests submitted to the procuring agency shall:

- (a) Include the name and address of the protestor.
- (b) Identify clearly the procurement under which the protest is being submitted.
- (c) Identify the action being protested and provide sufficient detailed documentation to support the protest action.
- (d) Indicate the action, ruling or relief desired from the procuring agency.

The procuring agency will review the protest and render its decision in writing within seven (7) calendar days of receipt of the protest, setting forth reasons for its decision.

The procuring agency is responsible, in accordance with good administrative practice and

sound business judgment, for the settlement of all contractual and administrative issues arising out of the procurement, including protests, contract defaults, disputes or breaches. The decision of the procuring agency as to protests shall be final and conclusive, unless, within seven (7) calendar days of the date a decision was rendered by the procuring agency, a written appeal of the same is submitted by the bidder and received by the procuring agency, with a copy to KYTC. This will constitute a request for review by KYTC of the procuring agency's action. Such review shall merely be considered oversight reconsideration and shall not constitute adjudication by KYTC with respect to the rights of the bidder. The procuring agency must immediately furnish KYTC a copy of all previous correspondence and other documentation pertaining to the bidder's request for review. In conducting its review, KYTC will consider only the appeal letter and correspondence and documentation provided by the procuring agency, as well as additional information obtained through specific requests to the procuring agency, bidders, protestor, or other third party. KYTC will not substitute its judgment for that of the procuring agency unless the matter specifically relates to state or federal laws, regulations or procedures. Any requests for review shall, in addition to (a)-(d) above, include:

(e) A statement of the grounds for review and any supporting documentation. (The grounds for review must be fully supported, but KYTC will not consider additional material not submitted to the procuring agency unless specifically requested by KYTC.)

(f) A copy of the protest filed with the procuring agency and copy of the agency's decision.

KYTC may request additional information from the procuring agency and/or the protester. Additional information must be submitted as expeditiously as possible, but in no case later than ten (10) calendar days after the request.

If the request for review is submitted prior to award of a contract, the procuring agency will not award until the matter is resolved. If the contract has been awarded prior to the request for review, the contractor shall proceed diligently with the performance of the contract in accordance with the procuring agency's decision.

The decision of KYTC shall be set forth in writing with reasons stated and shall be final and conclusive. The parties to the review may mail or otherwise furnish to FTA (if applicable) a written appeal consistent with FTA Circular 4220.1F.