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- **26. PROTESTS AND RESOLUTIONS OF PROTESTS**
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- **26.1 RIGHT TO PROTEST**
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- **26.1.1 Who May File.** Any bidder or proponent who believes in good faith that the proper procurement process has not been followed may protest to the General Manager. A “no bid” submittal does not make a business a “bidder” and eligible to protest.
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- **26.1.2 What May Be Protested.** Protestants may file a protest on any phase of a competitive sealed bid or proposal or award, including but not limited to, specification preparation, solicitation, award, cancellation of solicitation, rejection or other matters arising from a solicitation or award. Protests must allege specific violations of applicable state statutes, JTA ordinances or bid packets or requests for proposals. General differences of opinion concerning these areas will not be considered grounds for protest.
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- **26.1.3 Authority to Resolve Protests.** The General Manager has the authority to take any action reasonably necessary to resolve a protest. This authority shall be exercised in accordance with this section.
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- **26.2 FILING PROTEST**
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- **26.2.1 Protest Must Be Written.** Protests must be in writing and addressed to the
 - General Manager.
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- **26.2.2 Contents.** The protest shall include:
 - a. the name and address of the protestant;
 - b. identification of bid or proposal name and number and the number of the solicitation;
 - c. a statement of the grounds for protest;
 - d. support in exhibits, evidence or documents to substantiate any claim unless not available within the filing time, in which case the expected availability date shall be indicated; and
 - e. specific ruling requested from the General Manager.
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- **26.2.3 Pleadings.** No briefs or other technical forms of pleading or motion are required, but the protest and other submissions should be concise, logically arranged and direct.
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- **26.2.4 Time Limit.** Protest shall be filed within fifteen (15) days after the knowledge of the facts or occurrences giving rise to the protest, but in any case protests may not be filed later than seven (7) days after JTA Board approves award of the contract.

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- **26.2.6 Additional Information.** If the General Manager equires additional information from the protestant, from the using department, or from interested parties, such information shall be submitted within the time period established by the General Manager. Failure to timely comply may result in consideration and resolution of the protest without the untimely filed information.

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- **26.3 PROCUREMENT AFTER PROTEST**

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- In the event of a timely protest, the General Manager shall not proceed further with the procurement unless the General Manager makes a written determination that the award of the contract is necessary to protect substantial interests of JTA. Such written determination should set forth the basis for the determination

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- **26.4 NOTICE OF PROTEST**

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- **26.4.1 Notice to Bidders and Proponents.** The General Manager shall give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or proponents who appear to have a substantial and reasonable prospect of receiving an award if the protest or appeal is denied.

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- **26.4.2 Notice to Using Department.** The General Manager shall provide a copy of the protest to the using department that requested the solicitation.

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- **26.5 FURNISHING OF INFORMATION ON PROTESTS**

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- **26.5.1 Confidentiality of Information.** Protests are public records as defined by the Inspection of Public Records Act (“the Act”). Confidentiality of information submitted in a protest is determined by that Act. The General Manager shall examine the protests to determine whether any request for non-disclosure of any information contained in the protest is allowed under the Act. Requests for non-

- disclosure of certain information in a protest must be accompanied by a citation to the statutory provision that would allow such non-disclosure. The Purchasing

- Director shall inform the protestant in writing which portions, if any, of the

- protest will not be disclosed. The protest shall be open to public inspection

- subject to any valid prohibition on the disclosure of confidential data.

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- **26.5.2 Comments on Information.** Any interested person may file comments on the information, provided such comments are filed within ten (10) days of receipt of the information.

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- **26.6 HEARING**

- **26.6.1 When Held.** A hearing on the merits of the protest may be held at the discretion of the General Manager, with or without the request of the protestant, interested parties or using department. The General Manager shall establish the necessary procedures for a hearing. Requests for hearings should be made at the time of the filing of the protest or at the request for reconsideration.

- **26.6.2 Comments on Hearing.** Written comments on the hearing may be submitted by any interested party. Any written comments must be received by the General Manager within five (5) days of the date on which the hearing was held, unless provided otherwise.

- **26.6.3 Termination of Contracts.** Proposed contract termination shall be reviewed by JTA Attorney and, if determined to be required, notice of termination shall be issued by that office.

- **26.7 RESOLUTION**

- **26.7.1 Written Determination.** The General Manager shall make a written determination on the merits of the protest as expeditiously as possible or within thirty (30) days of receipt of all information or the date of any hearing held on the matter, whichever is later, and shall furnish a copy of the determination to the protestant, JTA Attorney's Office and other interested parties who have requested a copy in writing.

- The record for the determination shall include:

- **a.** a copy of the protest;
- **b.** a copy of the bid or proposal submitted by the protestant and copy of the bid or proposal that is being protested;
- **c.** a copy of solicitation, including the specifications or portions, relevant to the protest;
- **d.** a copy of the abstract of bids or proposals or relevant portions thereof;
- **e.** any other documents which are relevant to the protest, including the contract, if one has been awarded;
- **f.** findings and conclusions in the matter together with copies of supporting documentation. If the award was made after receipt of the protest, the statement shall include the determination required under Section 26.3, Procurement After Protest;
- **g.** a statement of the resolution of the protest.

- **26.7.2 Determination of no procedural violation.** If the determination is that the proper procurement procedures were followed, when the written determination is sent to the protestant, the procurement procedure may resume.

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- **26.7.3 Determination of procedural violation.**
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- **26.7.3.1 Prior to Award.** If, prior to award, the General Manager determines that a solicitation or proposed award is in violation of proper procurement procedures, then the solicitation or proposed award shall be canceled.
- **26.7.3.2 After Award.**
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- **No Fraud or Bad Faith.** If after an award, the General Manager determines that a solicitation or award is in violation of proper procurement procedures and that the successful bidder or proponent has not acted fraudulently or in bad faith, the General Manager, after consultation with the JTA Attorney, shall determine whether:
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 - **a.** The award may be revised to comply with proper procurement procedures, if possible, provided that a determination is made that doing so is in the best interest of JTA; or
 - **b.** The award should be terminated.
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- **Fraud or Bad Faith.** If, after an award, the General Manager determines that a solicitation or award is in violation of proper procurement procedures and that the successful bidder or proponent has acted fraudulently or in bad faith, the award shall be canceled.
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- **26.7.4 Reimbursement of Costs.** The JTA may pay the protestant reasonable costs incurred in connection with the solicitation, including bid preparation costs, when a protest is sustained and the protestant should have received the award but was not. The protestant must request reimbursement in writing, stating the reasons and amount, for the reimbursement to be considered. The JTA General Manager will consider the reimbursement request and make the final determination.
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- **26.8 REQUEST FOR RECONSIDERATION**
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- **26.8.1. Request.** Reconsideration of a decision resolving a protest may be requested by the protestant, any interested party who submitted comments during the proceeding, and any using department involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law or fact.
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- **26.8.2 When To File.** Request for reconsideration of a decision resolving a protest shall be filed not later than fifteen (15) days after issuance of such decision.
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- **26.8.3** The final written determination of the General Manager shall be issued within fifteen (15) days of receipt of request for reconsideration.
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- **26.9 REVIEW BY THE JTA GENERAL MANAGER**

- **26.9.1** The protestant may also request a meeting to review the protest with The JTA General Manager or a written determination from The JTA General Manager indicating concurrence or non-concurrence with the determination issued by the Purchasing Office.

- **26.9.2** The request for review by The JTA General Manager must be filed within (5) days after the written determination of the General Manager.

- **26.9.3** The JTA General Manager's decision is the final determination for purposes of judicial review.

- **26.10 EX PARTE COMMUNICATION**

- The General Manager shall not receive, nor shall any person directly or indirectly involved in a protest receive any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in a protest, without notice to all known parties with a direct interest in the proceedings.