

DISPUTE AND PROTEST PROCEDURES

According to FTA Circular 4220.1E § 7 (1) k and l:

Grantees alone will be responsible in accordance with good administrative practice and sound judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts. The Federal Transit Administration (FTA) will not substitute its judgment for that of the grantee or subgrantee, unless the matter is primarily a federal concern. Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction.

Potential bidders, contractors, or proposers can lodge written protests as a remedy to correct a perceived wrong that may have occurred during the procurement process. STAR TRANSIT will accept and review the protest with the understanding that the integrity of the procurement process may be at stake. STAR TRANSIT will use the following procedures to resolve disputes in the attempt to avoid FTA involvement or litigation.

All protests lodged by potential or actual bidders, contractors, or proposers must be made in writing and contain the following information:

1. Name, address, and telephone number of the protester.
2. Identification of the solicitation or contract number and title.
3. A detailed statement of the protest's legal and factual grounds, including copies of relevant documents.
4. Identification of the issue(s) to be resolved and statement of what relief is requested.
5. Argument and authorities in support of the protest.
6. A statement that copies of the protest have been mailed or delivered to all interested parties in the Invitation For Bid (IFB) or Request for Proposal (RFP) process. In the case of RFP, the Executive Director shall direct the protester to mail or deliver the protest to relevant parties.

Mail the protest to:

STAR TRANSIT
P O Box 703
Terrell, TX 75160

Overnight or hand delivers the protest to:

STAR TRANSIT
500 Industrial Blvd.
Terrell, TX 75160

Faxed or emailed protests will not be accepted.

The STAR TRANSIT Executive Director will respond, in written detail, counterclaims to each substantive issue raised in the protest. The Executive Director will also perform the following analysis:

1. Price Analysis or Cost Analysis for each claim.
2. Technical analysis to determine the validity of the claim(s) and determine the appropriate response(s).
3. Legal Analysis to consider all the factors available after the price, cost and technical analyses have been conducted to determine the contractor's, STAR TRANSIT's, and FTA's legal positions.

STAR TRANSIT has the authority to render the final determination regarding the protest. Any determination rendered by STAR TRANSIT will be final.

PRE-BID OR SOLICITATION PHASE PROTEST

A Pre-Bid or Solicitation Phase Protest must be received in writing by STAR TRANSIT Executive Director a minimum of five (5) full workdays prior to the bid opening or proposal due date. If the written protest is not received in the time specified, the award may be made following normal procedures, unless the Executive Director, upon investigation, determines that remedial action is required on the grounds of fraud, gross abuse of the procurement process, or otherwise indicates substantial prejudice to the integrity of the procurement system, and said action should be taken. Within three (3) workdays from the time the protest is received, the STAR TRANSIT Executive Director will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. The Executive Director will respond to the protest in writing within five (5) working days from the time the protest was received. If the Executive Director decides to withhold the award pending the resolution of the protest, he/she may request a time extension for award acceptance from those bidders, contractors, or proposers whose bids or proposal might become eligible for the award. This extension for the award acceptance must be with the consent of sureties, if any, in order to avoid re-advertising.

STAR TRANSIT will not make an award prior to five (5) working days after the protest is resolved, or if the protest has been filed with FTA during the protest negotiation period, unless STAR TRANSIT determines that:

1. The items or services to be procured are urgently required;
2. Delivery or performance will be unduly delayed by failure to make the award promptly, or
3. Failure to make the award will otherwise cause undue harm to STAR TRANSIT or the Federal government.

The Executive Director will document this action and give written notice of the decision to proceed with the award to the Protester, and to other parties where deemed necessary.

PRE-AWARD PROTEST

Protests may be lodged after the Bid Opening or Close of Request for Proposal deadline and prior to Notice of Award. Within three (3) workdays from the time the protest is received, the STAR TRANSIT Executive Director will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. The Executive Director will respond to the protest in writing within five (5) working days from the time the protest was received. If the Executive Director decides to withhold the award pending the resolution of the protest, he/she may request a time extension for award acceptance from those

bidders, contractors, or proposers whose bids or proposal might become eligible for award. This extension for award acceptance must be with the consent of sureties, if any, in order to avoid the need to readvertise.

STAR TRANSIT will not make any award prior to five (5) working days after the protest is resolved, or if the protest has been filed with FTA during the protest negotiation process, unless STAR TRANSIT determines that:

1. The items or services to be procured are urgently required;
2. Delivery or performance will be delayed by failure to make the award promptly;
3. Failure to make the award will otherwise cause undue harm to STAR TRANSIT or the Federal Government.

The Executive Director will document this action and give written notice of the decision to proceed with the award to the Protester, and to other parties where deemed necessary.

POST-AWARD PROTEST

STAR TRANSIT will receive protest in writing within three (3) working days after the Notice of Award and letters of notification should have been received by bidders or proposers. Upon receipt of a protest, the Executive Director shall notify the bidder or proposer awarded the contract. The Executive Director will render a determination to proceed with the contract or suspend the project until the protest is resolved. The Executive Director will respond to the protest in writing within five (5) working days after receipt of the protest.

APPEALS

STAR TRANSIT Executive Director has the authority to settle any dispute and resolve the protest. The Executive Director may solicit written responses regarding the protest from other parties. If this course of action does not result in a satisfactory resolution, the Protester may appeal in writing to the STAR TRANSIT's Executive Director within three (3) working days after the Executive Director issues a final decision. The Executive Director will issue a decision within five (5) working days after receipt of the appeal.

STAR TRANSIT may elect to involve legal counsel or arbitration and mediation consultants to resolve the issue(s).

The Protester has the right to appeal in writing to the Federal Transit Administration if:

1. The Protester has exhausted all administrative remedies with STAR TRANSIT, and
2. STAR TRANSIT has failed to follow its protest procedures or failed to review a complaint or protest.

The Protester's appeal must be received by the FTA Region VI Office within five (5) working days of the date of the Protester knew or should have known the violation.

Office of Operations and Program Management
U. S. Department of Transportation
Federal Transit Administration Region VI
819 Taylor Street, Suite 8A36
Fort Worth, Texas 76102
Phone: 817-978-0550

When the Protester sends an appeal to FTA, the Protester must also send a copy of the appeal to STAR TRANSIT within the same time frame. In the event of a protest, they will contact FTA to check whether or not an appeal has been made.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regions will be under the jurisdiction of state or local authorities.

In the event that data becomes available that was not previously known, or there has been an error of law or regulations, STAR TRANSIT will grant an allowance for request for reconsideration.

NOTIFICATION OF FTA IN DISPUTE MATTERS

The FTA Master Agreement MA (6), October 1, 1999, Section 41 – *Disputes, Breaches, Defaults, or Other Litigations*, states that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- a. Notification to FTA. The Recipient agrees to notify FTA of any current or prospective major dispute, breach, default, or litigation that that may affect the Federal Government’s interests in the Project or the Federal Government’s administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform the FTA before doing so.
- b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of any proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to the Project Account in lieu of returning the Federal share to the Federal Government.
- c. Enforcement. The Recipient agrees to pursue all legal rights available under any third party contract.
- d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.
- e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

FTA Circular 5010.1C, Chapter 1, Section 7b (1) (d) requires grantees to notify FTA of any current or prospective litigation or major disputed claim in excess of \$100,000 relating to any third part contract. This Circular also requires grantees to provide a list of all outstanding claims exceeding \$100,000 and a list of all claims settled during the reporting period as part of each quarterly progress report. A brief description and reasons for each claim should accompany this list.

For information on circumstances where STAR TRANSIT is required to secure FTA review and concurrence in a proposed claim settlement before using Federal funds, refer to the FTA Best Practices Procurement Manual, Chapter 11.2 “FTA Review and Concurrence”.