

PROTEST PROCEDURES

PURPOSE. The purpose of a protest procedure is to allow an actual or prospective proposer, bidder, offeror, or contractor ("Interested Party") who is aggrieved in connection with a solicitation, evaluation, or award of a contract, an opportunity to state its dispute, pursuant to a certain protest procedure ("Protest Procedure"). At DART, the Procurement Manager ensures that all solicitations contain appropriate instruction for interested parties to access the Protest Procedure.

Because DART's response to a protest establishes a precedent, it is important that DART's responses to protests be consistent and takes into consideration the best interests of DART on a long-term basis.

PROCEDURE. A protest must be submitted by an Interested Party no later than seven (7) business days prior to the date and time designated for submittal of bids or proposals or within five (5) business days after the allegedly aggrieved person or party is notified of contract award. All protest must be in writing and shall contain the following:

- the procurement title and/or number under which the protest is made;
- the name and address of the allegedly aggrieved party;
- a detailed description of the specific grounds for the protest and all supporting documentation;
- the specific ruling or relief requested; and
- the written protest shall be addressed to DART Procurement Manager, Des Moines Area Regional Transit Authority, 620 Cherry Street, Des Moines, IA 50309.

a. Evaluation of Protests:

A protest decision should ordinarily be written and published within ten (10) business days of receipt of the protest. The Procurement Manager may extend the response period if additional time is required to gather and evaluate information necessary for the decision or for other good cause.

Upon receipt of a protest, the Procurement Manager shall notify parties involved in the procurement as identified above, and such DART personnel or others as may be appropriate or necessary to determine the validity of the protest. A notice of the receipt of a protest pertaining to a federally participating purchase shall be sent to the FTA regional office in accordance with FTA Circular 4220.1F, Chapter VII, Sec. 1.a(2). Copies of the protest submittal, or portions thereof, may be provided to the notified parties as appropriate.

The Procurement Manager may request additional written information from the protestor or other parties, as necessary to determine the validity of the protest. A formal or informal hearing may be held. If a formal hearing is held, testimony shall be given under oath and a transcript or electronic recording of the proceeding shall be made; the transcript or recording shall be provided to the protestor and made part of the protest record.

The Procurement Manager shall redact from any submission under the protest process information which has been identified as proprietary, and which, in his/her judgment, is protected from disclosure under Iowa Code Chapter 22, *Examination of Public Records (Open Records)*, prior to furnishing such submission to any other party, unless the person furnishing the information consents, in writing, to distribution of the information to other interested parties.

The Procurement Manager will consult DART Legal Counsel prior to issuing a decision regarding the protest.

b. Response to Protest:

- i. Upon receipt of a timely written protest, the Procurement Manager will consider the protest in accordance with established procedures and promptly issue a written decision stating the reasons for the action taken and informing the allegedly aggrieved person of his/her right to appeal the decision to the DART CEO.

The decision document will contain four parts:

- o SUMMARY – Describes briefly the protesting party, the solicitation involved, the issue(s) raised, and the decision.
 - o BACKGROUND – Describes in more detail the history of the solicitation and the procurement events leading to the protest, the date the protest was received, and the process by which it was evaluated.
 - o DISCUSSION – Identifies the issue or issues raised by the protestor, and the factors considered in reaching a decision, and the rationale for the decision.
 - o DETERMINATION – States the decision and any remedy or subsequent action, (e.g., cancellation of the procurement) resulting from the protest.
- ii. The decision made by the Procurement Manager shall be final and conclusive unless appealed in writing to the DART CEO within five (5) business days of receipt by the Protestor. The DART CEO will consider the appeal and promptly issue a written decision, which shall be final and conclusive.
 - iii. A Protestor may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the protestor's right, if any, to commence litigation.
 - iv. Failure to comply with these protests and appeal requirements will render a protest or an appeal untimely or inadequate and may result in its rejection by DART.
 - v. After the exhaustion of all administrative remedies, the protestor shall have ten (10) calendar days to commence litigation. Failure to commence litigation within this limitation shall constitute an absolute waiver of the protestor's right.

c. Record of Protest:

Upon receipt of a protest involving FTA funded contracts, FTA shall be notified, and shall be kept informed of the status of the protest until resolved.

Protest information to be reported to FTA includes:

- i. Subject. A list of protests involving FTA funded contracts or potential contracts that:
 - o Have a value exceeding \$100,000, or
 - o Involve a controversial matter, irrespective of amount, or
 - o Involve a highly publicized matter, irrespective of amount.
- ii. Details. The following information about each protest:
 - o A brief description of the protest,

- The basis of disagreement, and
 - If open, how far the protest has proceeded, or
 - If resolved, the agreement decision reached, and
 - Whether an appeal has been taken or is likely to be taken.
- iii. When and Where. The following information about each protest:
- In its next quarterly FTA quarterly Milestone Progress Report, and
 - At its next Project Management Oversight review, if any.
- iv. FTA Officials to be notified. When DART denies a bid protest, and especially if an appeal to FTA is likely to occur, DART's FTA Regional Administrator is to be notified, or the FTA Associate Administrator for the program office administering a headquarters project directly.

The Procurement Manager shall establish a separate file in which a complete record of the protest shall be maintained. The file shall constitute a separate portion of the overall procurement file.

The procurement protest file shall include reasonable and adequate documentation of the protest and outcome of the protest. Protest file documentation should be proportional to the size and complexity of the protest.

The protest file should, at a minimum, include the following:

- the protest, including supporting documentation
- record of determination of protest timeliness
- record of internal distribution of protest
- record of notice to FTA, if federal funds are involved
- record of internal responses to protest
- record of legal review
- determination and findings, including supporting documentation
- protester response / appeal
- result of appeal
- notice of cancellation of solicitation, if applicable

d. Protest at the Federal Transit Administration level:

Protests made to the FTA will be limited to DART's failure to have or follow its protest procedures, DART's failure to review a complaint or protest, or violations of federal law or regulation. Any protest to the FTA must be made in accordance with the following guidelines:

- i. A protest must be filed with the FTA no later than five (5) business days after the protester learns or should have learned of an adverse decision by DART or other basis of appeal to FTA;
- ii. A protest to FTA must be filed in accordance with FTA Circular 4220.1F, Chapter VII, as amended.
- iii. The Procurement Manager shall submit to the FTA Regional Office a copy of all protests and DART's response.

e. Notice of Protest Policy

Each solicitation above the small purchase threshold as defined herein shall contain DART's Protest Policy Procedures. DART's Protest Policy Procedures shall also be listed on its website.