



PROTEST PROCEDURES

According to FTA Circular 4200.1F, Chapter VII (page VII-1, par. 2), “In general, FTA will not substitute its judgment for that of the recipient or sub-recipient unless the matter is primarily a Federal concern. Examples of “Federal concerns” include, but are not limited to, situations “where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste, or fraud.” Nevertheless, FTA can become involved in the recipient’s administrative decisions when assistance to support the costs of settlements or other resolutions of protests, disputes, claims, or litigation.” In all instances, City of Jackson, Department of Planning and Development, Transit Services Division (City) shall disclose information regarding protests to FTA via memorandum.

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. The City will accept and review the protest with the understanding that the integrity of the procurement process may be at stake. The City will use the following procedures to resolve disputes in the attempt to avoid FTA involvement or litigation.

All protest 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 or Request for Proposal process. In the case of Request for Proposals, the City Transit Services Procurement Officer shall direct the protester to mail or deliver the protest to relevant parties.

Mail or hand deliver the protest to:
Procurement Officer
City of Jackson, Department of Planning and Development
Transit Services Division
200 South President Street
Jackson, MS 39205-0017

(Faxed or emailed protests will not be accepted.)

The City's Transit Services Division Procurement Officer will respond, in written detail, with counterclaims to each substantive issue raised in the protest. The Procurement Officer will also perform the following analysis:

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

(For more information on developing a position and how to handle liquidated damages, refer to the *Best Practices Procurement Manual* Sec. 11.2).

5.1 PRE-BID OR SOLICITATION PHASE PROTEST

A Pre-Bid or Solicitation Phase Protest must be received in writing by the City's Transit Services Procurement Officer a minimum of Five (5) full work days 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 City's Transit Services Procurement Officer, 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) working days from the time the protest is received, the City's Transit Services Procurement officer will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. The City's Transit Services Procurement Officer will respond to the protest in writing within five (5) working days from the time the protest was received. If the City's Transit Services Procurement Officer decides to withhold the award pending the resolution of the protest, the City's Transit Services Procurement Officer 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 for re-advertising.

The City 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 the City determines that:

- The items or services to be procured are urgently required;
- Delivery or performance will be unduly delayed by failure to make the award promptly; or
- Failure to make the award will otherwise cause undue harm to the City or the federal government.

The City's Transit Services Procurement Officer 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.

5.2 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) work days from the time the protest is received, the City's Transit Services Procurement Officer will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. The City's Transit Services Procurement Officer will respond to the protest in writing within five (5) working days from the time the protest was received. If the City's Transit Services Procurement Officer decides to withhold the award pending the resolution of the protest, the City's Transit Services Procurement Officer may request a time extension for award acceptance from those bidders, contractors, or proposers whose bids or proposal for award acceptance from those bidders, contractors, or proposers whose bids or proposal might become eligible for award. The extension for award acceptance must be with the consent of sureties, if any, in order to avoid the need to re-advertise.

The City 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 process, unless the City determines that:

- The items of services to be procured are urgently required;
- Delivery or performance will be unduly delayed by failure to make the award; or
- Failure to make the award will otherwise cause undue harm to the City or the Federal Government.

The Procurement Officer 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.

5.3 POST-AWARD PROTEST

The City's Transit Services Procurement Officer 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 City's Transit Services Procurement Officer shall notify the bidder or proposer awarded the contract. The City's Transit Services Procurement Officer will render a determination to proceed with the contract or suspend the project until the protest is resolved. The City's Transit Services Procurement Officer will respond to the protest in writing within five (5) working days after receipt of the protest.

5.4 DISPUTES POLICY

The City's Transit Services Procurement Officer will notify the Protestor upon timely receipt of a Protest and may, where appropriate, request additional information from the protestor. The City may, at its discretion, meet with the protestor to review the matters raised by the Protest.

- A. Where a timely Protest has been filed prior to opening of Bids and unless the Protest is resolved by the City prior thereto, the date for receipt of Bids will be extended to accommodate the time needed for resolving the Protest and instituting any necessary remedial measures, unless otherwise authorized to proceed under the circumstances set forth in Section 16.6(C) below.
- B. When a Protest against the making of an award is received and the award will be withheld pending disposition of the Protest, the Bidders whose offers might be eligible for award

should be informed of the Protest. If appropriate, those Bidders should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance.

C. The City may suspend the procurement process upon receipt of a bona fide Bid Protest. However, the City reserves the right, notwithstanding the pendency of a Protest, to proceed with the appropriate action in the procurement process or under the contract in the following circumstances:

- Where the item to be procured is urgently required;
- Where the City determines that the Protest is vexatious or frivolous; or
- Where delivery or performance will be unduly delayed or other undue harm will occur by failure to make the award promptly.

D. Except in extraordinary circumstances, the City's Transit Services Procurement Officer shall issue a written decision on the Protest based on the information provided by the protestor, the results of any meetings with the protestor, and the City own investigation. The City's decision is final except where:

- New data becomes available which was not previously known and which is a basis for Protest.

5.5 APPEALS

The City's Transit Services Procurement Officer has the authority to settle any dispute and resolve the protest. The City's Transit Services Procurement Officer may solicit written responses regarding the protest from other parties. If the course of action does not result in a satisfactory resolution, the Protester may appeal in writing to the Transit Services Manager within three (3) working days after the Procurement Officer issues a final decision. The City's Transit Services Manager in consultation with the City's Deputy Director of City Planning will issue a decision within five (5) working days after receipt of the appeal.

The City may elect to involve legal counsel and mediation consultants to resolve the issue(s).

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

- The Protester has exhausted all administrative remedies with the City and
- The City 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 IV Office within five (5) working days of the date the Protester knew or should have known of the violation.

Office of Operations and Program Management
U.S. Department of Transportation
Federal Transit Administration Region IV
230 Peachtree NW, Suite 800
Atlanta, Georgia 30303
Phone: (404) 865-5600

When the Protester sends an appeal to FTA, the Protester must also send a copy of the appeal to the City's Transit Services Procurement Officer within the same timeframe. In the event of a protest, the City's Transit Services Procurement Officer 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 regulations 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 regulation, the City will grant an allowance for request for reconsideration.

5.6 NOTIFICATION TO FTA IN DISPUTE MATTERS

The FTA Master Agreement MA (21), October 1, 2014, Section 41 – *Disputes, Breaches, Defaults, or Other Litigation*, 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 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 5010.1D, Chapter I, 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 party 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 the City is required to secure FTA review and concurrence in a proposed claim settlement before using Federal funds, refer to the *Best Practices Procurement Manual* Sec. 11.2.