

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

**PROTEST PROCEDURES
FOR THE
BIDDING AND AWARD OF
FEDERALLY ASSISTED
THIRD PARTY CONTRACTS**

**(Construction, public improvements, personal services,
negotiated procurement and other major procurement contracts)**

REVISED: September 2011

1. Policy

In the event that any protests, discrepancies, or legal questions arise during the bidding and award process of federally assisted construction, public improvements, personal services, negotiated procurement and other major procurement contracts, the Contract Manager shall report unresolved protests to the Director of Transportation, who shall review the protest and recommend its resolution to the Municipal Transportation Agency. These procedures shall be incorporated by reference in all bid packages.

2. Definitions

Contract Manager (CM) refers to the Municipal Transportation Agency engineer in charge of administering the contract that is the subject of the protest. CM also refers to the Project Manager for the project when there is no engineer administering the contract.

Award shall mean authorization by resolution of the Municipal Transportation Agency Board of Directors or authorization by the Director of Transportation, for contracts under the Director of Transportation's authority, for its staff to contract with a bidder or proposer, or recommendation by resolution of the SFMTA Board of Directors that the City's Board of Supervisors approve a contract with a bidder or proposer.

Award Process includes the pre-award, award and post-award phases of a negotiated procurement, a request for proposals (RFP) and a sealed bid.

Bid includes the terms "offer" or "proposal" as used in the context of negotiated procurements, requests for proposals and sealed bids.

City means the City and County of San Francisco, acting through the Municipal Transportation Agency.

Contract Compliance Office (CCO) is the SFMTA office that administers compliance with federal regulations governing Disadvantaged Business Enterprises, as well as SFMTA's program governing Small Business Enterprises.

Days refers to working days of the City and County of San Francisco (unless otherwise indicated).

Director of Transportation refers to the Director of Transportation of the SFMTA.

Department of Parking and Traffic (DPT) refers to the Department of Parking and Traffic of the Municipal Transportation Agency.

Disadvantaged Business Enterprise (DBE) is a for-profit, small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Federal Transit Administration (FTA) is an operating administration of the U.S. Department of Transportation.

San Francisco Municipal Transportation Agency (SFMTA or Agency) is the agency of the City and County of San Francisco that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the Department of Parking and Traffic, and has exclusive authority over contracting, leasing and purchasing by the Municipal Railway and the Department of Parking and Traffic, subject to certain restrictions of the City's Charter. The Agency acts through its Board of Directors.

Protest is a complaint by a bidder or proposer regarding a bid or the award process which arises prior to award and is formally communicated to the Director, as provided below.

Post-Award Protest is a complaint by a bidder or proposer when Municipal Transportation Agency awards a contract, or recommends that the Board of Supervisors award a contract, to other than the bidder or proposer recommended for award by SFMTA staff.

San Francisco Municipal Railway refers to the San Francisco Municipal Railway of the Municipal Transportation Agency.

Small Business Enterprise (SBE) refers to a for-profit, small business concern that qualifies for the program by being certified under any of the following programs: the State of California's Small Business Program, the City and County of San Francisco's LBE Program, or the Federal DBE program.

3. Responsibilities:

- 3.1** The Contract Manager (CM) obtains the response to issues not related to DBE compliance and coordinates the resolution of all protest issues.

- 3.2 The Contract Compliance Office (CCO) resolves issues regarding DBE compliance.
- 3.3 In the event that a protest is not resolved by the CM, the Director shall review the protest and make a recommendation to the Agency for final action.

4. Implementation

4.1. Submit Protest

A protest describing the nature of the disagreement must be submitted in writing to SFMTA no later than five (5) days following notification of proposed award. A post-award protest describing the nature of the disagreement must be submitted in writing to SFMTA no later than five (5) days following the Notification of Award of the contract. If the bid procedure requires submission of documents in separate phases and bidders may be disqualified at the end of a phase prior to the final award, then protests regarding a phase of the procedure (including protests concerning documents received by bidders during the phase) must be submitted in writing with a description of the disagreement to SFMTA no later than five (5) days following receipt of notification of the results of that phase.

Protests shall be addressed to:

Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness Ave, 7th Floor
San Francisco, CA 94103

with a copy to:

Director
Capital Programs and Construction Division
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

with a copy to:

Deputy, Contracts Administration
Capital Programs and Construction Division
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103

4.2 Coordination Efforts

With direction from the Director of Transportation, and following the requirements of FTA Circular 4220.1F, the CM shall determine the nature of the disagreement and coordinate resolution efforts.

4.3. DBE or SBE Requirements

If the protest involves meeting DBE or SBE requirements, the Contract Manager shall forward a copy of the protest to the Contract Compliance Office for review and recommendations. The CM shall also send a copy to the City Attorney for information.

The CCO shall review DBE or SBE requirements for the project and examine whether the protest has merit. Based on the examination, the CCO shall notify the Director of Transportation and the CM of its decision. The CM shall provide copies of the decision to the Director of Capital Programs and Construction Division. The CM shall then inform the protester, in writing, of the decision, responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal his decision to the Director of Transportation pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director denies the appeal.

Regarding the issue of whether a bidder has met its DBE or SBE goal or demonstrated good faith efforts in reaching the contract-specific DBE or SBE goal, the CCO's determination will be administratively final except when the CCO has determined that an apparent low bidder has failed to meet its goal or make the required good faith efforts. In that situation, the procedures in Section V.D.3.v of the Agency's DBE or SBE Program apply to requests for reconsideration from the apparent low bidder. Neither the Director of Transportation nor the SFMTA Board of Directors will have jurisdiction to hear administrative appeals or requests for reconsideration of the CCO's decision on good faith efforts.

4.4 Issues Not Related to DBE or SBE Requirements

If the protest concerns complaints regarding discrepancies in the bid documents, missing or required documentation, or the selection process, and is not related to DBE or SBE requirements, the CM or designee shall prepare a memorandum to the City Attorney's Office requesting an opinion on the protest. The CM shall attach a copy of the bidder's protest and all documentation from the bid package and any other document deemed necessary by the attorney.

Upon receipt of the memorandum, the City Attorney's Office will investigate and respond with an opinion to the Director of Transportation and the CM for review and evaluation. The CM shall provide copies of the opinion to the Director of Capital Programs and Construction Division, and the CCO. The CM shall inform the protester in writing of the CM's recommendation, stating the reasons for the recommendation, and responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal the decision to the Director of Transportation pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director of Transportation denies the appeal.

4.5 Disagreement by Protester

Except as provided in Section 4.3, in the event that the protester disagrees with the recommendations or decisions rendered, the protester may submit a written request to the Director of Transportation for review of the decision within five (5) days of receipt of the CM's letter responding to the protest. The Director of Transportation shall review the decision and make a recommendation to Agency for final action. The CM shall inform the protester of the Director of Transportation's recommendation, the date when the Agency will consider the item, and the protester's opportunity to address the Agency regarding the matter.

4.6 Incorporate Legal Opinion/Recommendation

The CM shall incorporate appropriate language reflecting the outcome of the protest in the calendar item and resolution for approval of the contract by the Agency. However, in the event of a multi-phased bid procedure as described in Section 4.1 above, the protest may be considered by the Agency prior to the meeting when final award is determined

4.7 Final Action

The protester shall be notified in writing of the Agency decision regarding the protest and/or award of the contract. The action of the Agency is final. Subject to the provisions of Section 4.8, the protester may seek a remedy in State or Federal court, as appropriate, from the final action of the Agency.

4.8 Protest to FTA

FTA may only entertain a protest that alleges that the Agency (1) failed to have written protest procedures; (2) failed to follow its written protest procedures; or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the Agency before pursuing a protest with FTA.