

Southwest Area Regional Transit District
Protest Procedures/Dispute Resolution

PROTEST PROCEDURES

1. Statement of Policy

SWART is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third party procurements using good administrative practices and sound business judgment.

In general, the Texas Department of Transportation will not substitute its judgment for that of SWART unless the matter is primarily a federal concern. Nevertheless, TxDOT can become involved in SWART's administrative decisions when a SWART protest decision is appealed to TxDOT or to FTA, or when SWART seeks to use FTA assistance to support the costs of settlements or other resolutions of protests, disputes, claims or litigation.

SWART shall give timely notification to its funding source when it receives a third party procurement protest and will keep TxDOT informed about the status of any such protest. SWART shall disclose all information about any third party procurement protest to TxDOT upon request.

SWART's procedure for addressing third party procurement protests is described. SWART shall insert its protest procedure in all solicitation documents for products and services having an estimated value of \$50,000 or greater.

2. SWART Staff Responsibilities

- a. SWART authorized Procurement representative – Responsibilities include: ensuring that SWART Protest Procedure is included in all solicitation documents for products and services having an estimated value of \$100,000 or greater; and providing information to and assisting the General Manager with the resolution of protests.
- b. General Manager – Responsibilities include: receiving and reviewing all procurement protests; and issuing the official SWART response to all procurement protests and appeals.
- c. Chief Financial Officer – Responsibilities include: reviewing all procurement protests; and advising and assisting the General Manager as needed with the resolution of all procurement protests.

2. Solicitation Provision

SWART shall insert the following provision in all solicitation documents for products and services having an estimated value of \$50,000 or greater:

a. Pre-Proposal Protests – All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the General Manager as specified below not later than 10 business days prior to the deadline for submission of bids/proposals.

The General Manager may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the General Manager as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the General Manager shall be the final agency decision on the matter but shall be subject to judicial review or review by TxDOT or FTA as specified below.

b. Pre-Award Protests – With respect to protests made after the deadline for submission of bids/proposals but before contract award by SWART, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, SWART's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the General Manager as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by SWART.

The General Manager may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that SWART shall announce the contract award.

The decision by the General Manager shall be the final agency decision on the matter but shall be subject to judicial review or review by TxDOT or FTA as specified below.

c. Requirements for Protests – All protests must be submitted to SWART in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best

knowledge and information of the Protestor, be signed by the Protestor, and be notarized. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by SWART.

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to:

Southwest Area Regional Transit District
Attn: General Manager – Procurement
713 East Main Street
Uvalde, Texas 78801

d. Protest Response - The General Manager shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, SWART will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official SWART response to the protest and SWART will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

Review of Protests by TxDOT/FTA – All protests involving contracts financed with federal assistance shall be disclosed to the FTA in accordance with FTA Circular 4220.1F. Protesters shall exhaust all administrative remedies with SWART prior to pursuing protests with TxDOT/FTA. TxDOT/FTA limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to TxDOT/FTA must be received by the Texas Department of Transportation representative within five (5) working days of the date the Protester has received actual or constructive notice of SWART's final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to TxDOT/FTA.