

## VENDOR PROTEST PROCEDURES

### A. Purpose

The purpose of these procedures is to set forth the procedures to be utilized by Foothill Transit in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.

### B. General

In order for a bid protest to be considered by Foothill Transit, it must be submitted by an interested party (as defined below in accordance with the procedures set forth herein. A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered by Foothill Transit, and will be returned to the submitting party without any further action by Foothill Transit. In all instances where Foothill Transit receives a protest involving a potential contract that will be funded with Federal Transit Administration funds, Foothill Transit will notify the Federal Transit Administration of the protest, provide information concerning the nature of the protest, and keep the Federal Transit Administration informed about the status of the protest.

### C. Definitions

For purposes of these Bid Protest Procedures:

1. The term "Bid" includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), and a proposal submitted by an offeror in response to a Request for Proposals (RFP).
2. The term "contract" means that document to be entered into between Foothill Transit and the successful bidder and offeror.
3. The term "days" refers to normal business days of Foothill Transit staff offices.
4. The term "interested party" means any person: who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and whose direct economic interest would be affected by the award of the contract or by failure to award a contract. A subcontractor does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.

5. The term “solicitation“ means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment or services.

D. Grounds for Protest

Any interested party may file a bid protest with Foothill Transit on the grounds that:

1. Foothill Transit has failed to comply with applicable Federal or State Law;
2. Foothill Transit has failed to comply with its procurement procedures;
3. Foothill Transit has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable;
4. Foothill Transit has issued restrictive or discriminatory specifications; or,
5. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.

E. Contents of Protest

1. A bid protest must be filed in writing and must include:
  - a. The name and address of the protestor.
  - b. The name and number of the procurement solicitation.
  - c. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of Foothill Transit procurement procedures, or specific term of the solicitation alleged to have been violated.
  - d. Any relevant supporting documentation the protesting party desires Foothill Transit to consider in making its decision.
  - e. The desired relief, action, or ruling sought by the protestor.
2. Protests must be filed with:

Director of Procurement  
Foothill Transit  
100 South Vincent Avenue, Suite 200  
West Covina, California 91790

3. All protests must be received at the Foothill Transit address listed above during normal office hours of 8:00 a.m. to 5:00 p.m., Pacific Standard or Daylight Time.
4. If any of the information required by this section is omitted or incomplete, Foothill Transit will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

F. Timing Requirements and Categories of Protests

Foothill Transit will consider the following categories of bid protests within the time period set forth in each category:

1. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five calendar days prior to the scheduled bid opening or deadline for submittal or proposals, as appropriate, in order to be considered by Foothill Transit. Any protest based on such grounds not filed within this period will not be considered by Foothill Transit. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
2. Any bid protests regarding the evaluation of bids or proposals by Foothill Transit, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with Foothill Transit no later than five calendar days after the protestor's receipt of Foothill Transit's written notice of its decision or intended decision to award a contract. Any protest filed after such date which raises issues regarding the evaluation of bids or proposals, or the contract approval or award will not be considered by Foothill Transit. Foothill Transit will notify all unsuccessful bidders or proposers of its intent to award a contract to the successful bidder or proposer by email at the same time it notifies the successful bidder or proposer if Board approval is not required, and at the same time as the publication of the Board agenda if Board approval is required.

G. Review of Protest by Foothill Transit

1. Foothill Transit will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.
2. In the notification, Foothill Transit will inform the protestor of any additional information required for evaluation of the protest by Foothill Transit, and set a time deadline for submittal of such information. If Foothill Transit

requests additional information, and it is not submitted by the stated deadline, Foothill Transit may either review the protest on the information before it, or decline to take further action on the protest.

3. In its sole discretion, Foothill Transit may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to Foothill Transit relative to the merits of the bid protest. Foothill Transit will set a time deadline for the submittal of such comments, which will be no less than 5 days after Foothill Transit provides notification of the protest.
4. In its sole discretion, Foothill Transit may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by Foothill Transit in deciding the bid protest if it is submitted to Foothill Transit in writing within 3 days after the conference.

#### H. Effects of Protest on Procurement Actions

1. Upon receipt of a timely protest regarding either the solicitation process of the solicitation documents in the case of sealed bids, Foothill Transit will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless Foothill Transit determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
2. Upon receipt of a timely protest regarding evaluation of bid or proposals, or the approval or award of a contract, Foothill Transit will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.
3. Notwithstanding the pendency of a bid protest, Foothill Transit reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
  - a. Where the item to be procured is urgently required;
  - b. Where Foothill Transit determines, in writing, that the protest is vexatious or frivolous;
  - c. Where delivery or performance will be unduly delayed, or other undue harm to Foothill Transit will occur, by failure to make the award promptly; or,

- d. Where Foothill Transit determines that proceeding with the procurement is otherwise in the public interest.

I. Summary Dismissal of Protests

Foothill Transit reserves the right to summarily dismiss all or any portion for a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by Foothill Transit in a previous bid protest by any interested party in the same solicitation or procurement action.

J. Protest Decisions

1. After review of a bid protest by appropriate Foothill Transit staff and/or legal counsel, a recommendation shall be made to the Foothill Transit Executive Director concerning the appropriate disposition of such protest.
2. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and Foothill Transit's own investigation and analysis.
3. The decision of the Foothill Transit Executive Director shall be in writing and shall be the final binding agency action. Except in exceptional circumstances, the decision of the Foothill Transit Executive Director will be issued within 30 days after the date all relevant information is submitted according to the dealings set forth in these procedures.
4. If the protest is upheld, Foothill Transit will take appropriate action to correct the procurement process and protect the rights of the protestor, including resolicitation, revised evaluation of bids or proposals or Foothill Transit's determination, or termination of the contract.
5. If the protest is denied, Foothill Transit will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.

K. Judicial Appeals

A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California.

L. Federal Transit Administration Appeals (Only if Federal funds are used in the procurement)

1. A protestor adversely affected by a bid protest decision of the Foothill Transit Executive Director may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular

4220.1, as currently in effect as of the date of Foothill Transit's decision on the bid protest. A protestor must exhaust its administrative remedies by pursuing Foothill Transit's protest procedures to completion before appealing Foothill Transit's decision to FTA.

2. Under the provision of the FTA Circular, FTA will only review protests regarding the alleged failure of Foothill Transit to have written protest procedures, the alleged failure of Foothill Transit to have complied with its protest procedures; or Foothill Transit's alleged failure to review a protest when presented the opportunity to do so. FTA will not consider every appeal filed by a protestor merely because a Federal law or regulation may be involved. Instead, FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA's overall public transportation program. FTA will refer violation of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.
3. In accordance with the FTA Circular, such protest must be filed with FTA's Regional Office no later than five (5) working days after the date when the protestor has received actual or constructive notice of Foothill Transit's final decision or within five (5) working days of the date when the protestor has identified other grounds for appeal to FTA (i.e., Foothill Transit's failure to have or failure to comply with its protest procedures or failure to review the protest.