

DART Procurement Protests, Disputed Claims, and Appeals

Administrative Committee

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Agenda

- Procurement Protests
- Contract Disputes
- Contract Disputes Review Board
- Administrative Appeals

Protest - Defined

- Protest means a claim that there has been a violation of law or these regulations or some other impropriety in connection with an Authority procurement. (DART Procurement Regulation)

Procurement Protests

- May be filed by “any interested party”
 - Pre-award – Prospective bidder or offeror
 - Post-award – Actual bidder or offeror
- Protest must be filed “within 10 days after the protester knows or should have known the facts giving rise thereto”
 - Procurement VP’s decision made “as expeditiously as possible”
 - Procurement process is stayed unless Executive Director determines otherwise
- Protester may request reconsideration within 5 days
 - Executive Director decision “as expeditiously as possible”
- Protester may appeal to the DART Board of Directors within 7 days

Contract Disputes

- Policy – “try to resolve all controversies by mutual agreement without litigation”
- Authority to settle and resolve controversies and issue decisions
 - Executive Director, and
 - Delegated to the Contracting Officer (CO)
 - Settlements in excess of \$25,000 require prior Executive Director approval
- If dispute cannot be resolved by mutual agreement, CO makes “final decision”
 - Contractor may assume “adverse decision” after 120 days
- Claimant may appeal to the DART Board of Directors

Disputes Review Board (DRB)

- Informal alternate disputes resolution process for major construction contracts
- Provided for in the Contract
- DRB shall assist in the timely and equitable resolution of contract disputes
- Three person board
 - One appointed by DART – Competitive selection based on qualifications
 - One appointed by Contractor
 - One selected by two DRB members and appointed as Chair
 - Regular meetings and site visits
- Contract disputes elevated internally before referral to DRB
- Disputed DRB recommendations referred to Contracting Officer for final decision

Administrative Appeals

- Appeals of a protest decision, claim decision or debarment is made to DART Board of Directors
- DART Board of Directors has appointed judges from Armed Services Review Board of Contract Appeal to hear these disputes
 - Familiar with these types of disputes
 - Experience with DART contract clauses which are similar to Federal clauses
- Any person appealing a decision administratively is entitled to a hearing. Like a trial:
 - Pre-hearing discovery
 - Testimony given
 - Evidence offered

Administrative Appeals continued

- Decision of the Authority shall be “final and conclusive” unless determined by a court of competent jurisdiction to have been
 - Fraudulent, capricious, arbitrary, so grossly erroneous to imply bad faith, or not supported by substantial evidence
 - Not final and conclusive as to questions of law
 - No challenge may be brought after two years
- Administrative appeal is required before contractor or potential contractor can go to court.

Thank you!



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