

**CITY OF CHARLOTTESVILLE
STANDARD OPERATING PROCEDURE**



Type of Policy: CONTRACT CLAIMS RESOLUTION	Departments: City Wide
Subject: Procedures for Making Decisions on Claims Submitted by City Bidders, Offerors and Contractors	
Authorization: City Code §22-32(a)(3)(f); City Code 11-131-132	
Approved by Purchasing Manager: <i>Amber Shiffert</i>	Effective Date: 3/29/2017
Approved by City Manager: <i>Murray</i>	

I. PURPOSE OF REGULATIONS

The purpose of this policy is to set forth procedures by which claims and disputes arising from City procurement transactions are reviewed and resolved consistent with Charlottesville City Code §§11-131 and 11-132, and Article 5 of the Virginia Public Procurement Act (§§2.2-4357 et seq.).

II. ENABLING LEGISLATION

City Code 11-131 and 11-132

City Code §22-32(a)(3)(f)

Virginia Public Procurement Act, Article 5 (Remedies) Va. Code §§2.2-4357 et seq.

III. DEPARTMENTS/DIVISIONS AFFECTED

All City boards, commissions, departments, divisions, offices, agencies, officers, officials and employees are affected by this policy.

IV. REGULATIONS AND PROCEDURES

A. CONSIDERATION OF CONTRACT CLAIMS

1. ***Time and manner for submitting claims***—contractual claims, whether for money or other relief, can be submitted to the City at any time, but they must be submitted no later than 60 days after final payment is made by the City to the vendor (“contract closeout” or

“contract completion”). All claims must be submitted by a contractor in writing to the City. No claim shall be given consideration unless written notice of the contractor’s intention to file a claim was given by the contractor at the time of the occurrence or beginning of the work upon which the claim is based.

2. ***Authorized decision makers***--Each of the following are authorized to make decisions on claims presented to the City by a contractor (“Decision Maker”).
 - a. Claims for \$5,000 or less may be decided by (a) the Director of Finance, or (b) by the head of the department or division that is administering the contract out of which the claim arises, with concurrence of the Director of Finance. The City Attorney’s office must concur in the decision.
 - b. Claims for \$5,001 up to either: (a) \$50,000, or (b) 25% of the original amount of the contract, whichever is greater, may be decided by (a) the City Manager, or (b) the Director of Finance. In either case, concurrence of the City Attorney’s office is required.
 - c. Contract claims for more than \$50,000 or 25% of the original amount of the contract, whichever is greater, must be decided by the City Manager, after consultation with the City Attorney’s office. In particular circumstances, including, without limitation, resolution of actual or threatened litigation, approval by the City Council may be necessary.

The dollar amounts referenced above in this section shall be determined with reference to the sum of: (i) the claim presented and (ii) the cumulative amount(s) of all claim(s) previously approved under the same contract.

For purposes of these procedures, the City Manager is the City’s chief administrative officer. By the City Manager’s approval of these procedures, each of the other city officials authorized above to act as a Decision Maker shall be deemed to be acting as the City Manager’s designee for that purpose. Additionally, the City Manager may delegate his or her decision-making authority to an employee of his office whose duties include acting as the City’s chief financial officer.

3. ***Form and content of decision***—Every determination of the Decision Maker shall be set forth in writing, and signed by the Decision Maker. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by a Decision Maker referenced within Paragraph (A)(2), above.

Step 1: Initially, the Decision Maker shall review a claim to determine whether notice of the vendor’s intention to file a claim was timely given. If not, the Decision Maker shall reject the claim, and the vendor shall be notified of the rejection.

Step 2: If the Decision Maker determines that notice of a claim was timely given, then the Decision Maker shall review and make a determination as to the merits of the claim. In doing so, the Decision Maker shall confer with the Purchasing Manager, the Director of Finance, the City Manager and City Attorney's office, as necessary or appropriate under the circumstances. The Decision Maker shall base his/her decision on (i) relevant contract provisions, (ii) federal, state or city code requirements, and (iii) documentation submitted by a contractor of actual damages incurred. For purposes of documentation of claims, forward-priced cost estimates are not evidence of actual damages incurred by a contractor.

The written decision on the claim shall identify the specific contract provision(s) which apply to the claim, and shall identify the facts which are the basis of the decision, including, without limitation, the facts that establish that notice of the claim was timely given.

The Decision Maker should render a decision within 90 days of the contractor's submission of a claim. If the Decision Maker does not render a decision within 90 days, then the contractor shall have a right to institute immediate legal action.

4. *Effect of decisions*—

- a. **Finality**—The written decision on the claim shall be final and conclusive unless the contractor appeals within six (6) months of the date of that written decision, by either (i) invoking the administrative appeals procedure set forth in Section III, below, if available, or in the alternative by instituting legal action as provided in Va. Code §2.2-4364.
- b. **Effect on Required Date of Payment**--A written decision on a claim shall not satisfy the requirement for an "invoice" or demand for payment, it shall merely be deemed an adjustment of the contract price. Nothing in these procedures shall preclude the city from requiring submission of an invoice for payment within a certain time after completion and acceptance of services performed or acceptance of goods. The payment procedures specified in the City's contract with a vendor shall govern the process by which requests for payment must be invoiced/ presented by a contractor and the date on which such payments must be made by the City.

B. ADMINISTRATIVE HEARING PROCEDURE

The Charlottesville City Council appoints members to serve on an administrative appeals panel, known as the City's "Vendor Appeals Board" ("VAB"). The purpose of the VAB is to perform the role of a disinterested dispute resolution panel, in accordance with Va. Code §2.2-4365(A).

1. **Applicability of administrative hearing procedures**—The administrative hearing procedure set forth within this Section B shall apply to the following procurement transactions: **(i)** City contracts for the purchase of goods, and **(ii)** City contracts for the

purchase of services, *excluding* professional services and construction services. For procurement transactions other than those excluded, the VAB shall have authority to conduct hearings for resolution of the following disputed matters:

- a. Protests of a decision to award, or an award of a contract
 - b. Appeals from refusals to allow withdrawal of bids
 - c. Appeals from disqualifications and determinations of non-responsibility, and
 - d. Appeals from decisions on contract claims, and appeals from other decisions on disputes arising during the performance of a contract.
2. ***Availability of administrative hearing, upon written appeal.*** Appeals from decisions rendered on contract claims pursuant to Section A, above, shall be directed in writing to the City Attorney's Office and referred directly to the VAB for a Step 2 administrative hearing, if timely appealed by the contractor within the time period specified in Va. Code §2.2-4363(E).

Protests and appeals of matters within Section B.1. (a), (b), (c); or (d), above, *other than* decisions on contract claims rendered pursuant to Section A, above, shall be directed to the City's Director of Finance for a Step 1 Initial Administrative Review, within ten (10) days of the time the bidder or contractor knows or should have known of the matter being protested or appealed, except that: appeals from disqualifications (e.g., refusal to pre-qualify, decision to debar) may be filed within thirty (30) days of the receipt of notice of the action taken.

3. ***Written Appeal is Required***--Each protest or appeal shall be in writing, and shall set forth in detail the factual circumstances forming the basis for the appeal. The City will provide a form for contractors' use in submitting protests or appeals.
4. ***Step 1 Initial Administrative Review:*** The Director of Finance, or his/her designee, shall conduct an investigation and shall render a written decision within ten (10) days of receiving the protest or appeal. In the course of investigation the Director of Finance may request additional written details, may request meetings of the parties involved, and may schedule a hearing at which the parties involved shall appear in person and present further information. No such hearing shall affect any bidder or contractor's right to request a hearing before the VAB, if the bidder or contractor is not satisfied with the final decision of the Director of Finance.
5. ***Step 2 Administrative Hearing before Disinterested Panel (VAB):***
- a. ***Request for Administrative Hearing:*** (i) within five (5) days of receipt of the decision of the City's Director of Finance following a Step 1 Initial Administrative Review, or (ii) within six (6) months from receipt of the written decision on a claim rendered in accordance with Section A of this policy, a bidder, offeror or contractor may request a hearing before the City's VAB. The request for a VAB hearing shall be made in writing and given to the Charlottesville City Attorney. The written request for a hearing shall clearly

identify the decision being appealed and shall clearly set forth the factual, contractual and legal circumstances forming the basis for the appeal.

A hearing before the VAB shall be held either within ten (10) days following the receipt by the City Attorney's Office of the written request for an appeal, or as soon thereafter as the schedules of the members of the VAB reasonably permit. If the appeal involves a claim or other dispute arising from performance of a City contract, the City Attorney's Office shall ensure that the VAB receives a copy of the applicable written contract for reference during the conduct of the appeal.

- b. ***Open meetings and decisions:*** the VAB is a public body, for purposes of the Virginia Freedom of Information Act (FOIA), and must conduct its proceedings and deliberations at open meetings, as required by state law. No deliberation, decision or vote of the membership of the VAB, or any part thereof, shall be taken to transact the business of the VAB, other than at an open meeting conducted in accordance with FOIA. Upon the conclusion of an administrative hearing, the VAB shall take action by majority vote, specifically articulating the factual basis on which its decision is premised. The VAB may take action at the same meeting at which the hearing was conducted, or may continue its meeting to a date certain for final deliberations and decision.
- c. ***Conduct of hearings:*** Any party to the appeal (i.e., the bidder/offeror/contractor and the City) may be represented by an attorney. Each party shall be provided a reasonable period of time in which to state its position and to present pertinent information. Each party shall be entitled to present witnesses in support of its position, and to cross-examine any witnesses called by the other party. Nevertheless, the hearing shall be conducted as an informal proceeding rather than a judicial-type trial. Formal, legal rules of evidence shall not apply, but the VAB may limit or exclude presentation of information it deems to be irrelevant or redundant, as well as to limit testimony and argument, as may be necessary to reasonably expedite the appeal proceedings.
- d. ***Statutory, limited role of VAB:*** The VAB only has such powers and authority as are expressly conferred within Va. Code §2.2-4365:
 - i. The VAB is a fact-finding body. The VAB is required to issue written findings of fact. The findings of fact shall be final and conclusive, and may not be set aside by a court, unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of Va. Code §2.2-4317.
 - ii. The VAB is a public body authorized to resolve contract disputes administratively. It is not, for any purposes, a judicial body or a court. The VAB's decision does not constitute a "judgment", "award" or "order" for any monetary or other relief. The VAB has no power or authority to impose

sanctions on either party, to order payment of interest or attorneys' fees, or to take any other action for the purpose of enforcing its decisions, as if it were a court or judicial body.

- iii. A VAB decision resolving a claim or other dispute arising under the performance of a contract does not, in and of itself, entitle a contractor to immediate payment of any amount(s) of monetary relief or damage(s). Pursuant to Va. Code §2.2-4352, the required date for payment to a contractor is either: (i) the date on which payment is due under the terms of the applicable contract, or, if a date is not established by contract, then (ii) 45 days after goods or services are received by the City, or 45 days after an invoice is rendered by the contractor, *whichever is later*.

- e. Following the announcement by the VAB of its findings at an open meeting, and a public vote thereon, the VAB shall issue a written decision containing findings of fact, consistent with the majority decision voted on at its open meeting. The VAB may assign one of its members to write the written decision, and may circulate the written decision among its members for comments and individual editing, prior to signature. The final written decision shall be issued within 30 days after the conclusion of the hearing, and shall be signed by the VAB Chair. The City will provide the VAB with a form for its use in setting forth its written decisions.

- f. Any party to the administrative procedure, including the City, shall be entitled to institute judicial review of the VAB's decision, if such action is brought within 30 days of receipt of the written decision. Actions taken to institute judicial review of a VAB decision, or other legal action, shall be subject to applicable provisions of the Virginia Public Procurement Act.

C. FEDERAL TRANSIT ADMINISTRATION FUNDED CONTRACTS

- 1. For FTA-funded procurements, a vendor may appeal the decision to the FTA. The protester must exhaust its administrative remedies by pursuing the recipient's protest procedures to completion before appealing the recipient's decision to FTA.

- 2. The protester must deliver its appeals to the FTA Regional Administrator for the region administering its project, or the FTA Associate Administrator for the program office administering its project, within five (5) working days of the date when the protester has received actual or constructive notice of the recipient's final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal include the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

3. The City/Charlottesville Area Transit will notify the Federal Transit Administration when it receives a third party contract protest to which FTA Circular 4220.1F applies, and to keep FTA informed about the status of the protest.

V. RELATED FORMS AND SCHEDULES

FORM: Notice of Claim

FORM: Contract Claim for Monetary or Other Relief

FORM: VAB Decision Form



Protest of Award or Decision to Award a Contract

Submit to: Christopher V. Cullinan, Director of Finance
P. O. Box 911
Charlottesville, Virginia 22902
cullinan@charlottesville.org
Fax: (434) 970-3232

Date:

IFB/RFP#:

Bidder Submitting Protest (Name of Company):

Bidder's Contact Person:

Address:

Email:

Phone:

Fax:

Basis of the Protest:

Relief Sought:

Authorized Signature of Bidder

Date



Vendor Appeal Form

Appeals from decisions on contract claims shall be submitted to:

City Attorney's Office
Craig Brown, City Attorney
P. O. Box 911
Charlottesville, Virginia 22902
brownc@charlottesville.org
Fax: (434) 970-3022

Appeals from: 1) refusals to allow withdrawal of bids, 2) disqualifications and determination of non-responsibility, and 3) appeals from other decisions on disputes arising during the performance of a contract, excluding appeals from decision on contract claims shall be submitted to:

Christopher V. Cullinan, Director of Finance
P. O. Box 911
Charlottesville, Virginia 22902
cullinan@charlottesville.org
Fax: (434) 970-3232

Date:

IFB/RFP/Contract #:

Vendor Submitting Appeal (Name of Company):

Vendor's Contact Person:

Address:

Email:

Phone:

Fax:

Basis of the Appeal:

Relief Sought:

Authorized Signature of Bidder

Date