



Statewide Transportation Planning Office

GUIDELINES TO APPEAL 5310 FORMULA GRANT AWARDS

I. Agency Authority

The Federal Government, through the Federal Transit Administration (FTA), provides financial assistance to develop new public transportation systems and improve, maintain, and operate existing systems. FTA oversees thousands of federally assisted projects to hundreds of State and local public transportation providers, primarily through its ten regional offices. Each FTA recipient is responsible for managing its programs and projects in compliance with applicable Federal requirements, and FTA is responsible for ensuring that recipients comply with those requirements.

The FTA recipient of 5310 formula grant funds for the State of Hawaii is the Hawaii Department of Transportation (HDOT) Statewide Transportation Planning Office (STPO). FTA Region 9 oversees the STPO and is responsible for providing financial assistance to FTA recipients and overseeing the implementation of most FTA programs. Certain programs, however, are the responsibility of FTA headquarters.

Each year, Congress passes legislation which, when signed by the President, appropriates funds for the Department of Transportation and related agencies. After that legislation is enacted, FTA publishes a Notice in the Federal Register that provides an overview of the apportionments and allocations based on these funds for the various FTA programs as well as statements of policy and guidance on public transit administration. Upon publication of the regional apportionments, the STPO allocates 5310 formula grant funds to eligible subrecipients in Maui, Kauai, Honolulu, and Hawaii Counties. These four counties include the islands of Oahu, Kauai, Molokai, Lanai, Maui, and Hawaii (also known as the Big Island).

II. FTA 5310 Selection Committee

STPO will review all applications for completeness and consistency with the Section 5310 formula grant program requirements. An appointed FTA 5310 Selection Committee will be convened to review qualified applications and recommend approval to the Director of Transportation. The FTA 5310 Selection Committee will consist of regional transportation agency representatives with expertise in various specialties including but not limited to background knowledge in the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, participation on boards with a focus on developmental disabilities, and transportation access for the elderly and disabled communities.

The FTA 5310 Selection Committee will evaluate and rank the qualified applications utilizing predetermined and weighted evaluation criteria which will total up to a maximum of 100 points per applicant. Eligible agencies must receive a minimum grand total average combined score of 70 points for further consideration of their application for 5310 formula grant funding.

The 5310 Program Manager will act as the liaison for the FTA 5310 Selection Committee. The 5310 Program Manager will distribute the applications to the FTA 5310 Selection Committee and coordinate the FTA 5310 application review process. The 5310 Program Manager will be solely responsible for summarizing, averaging and reporting the vote tally from the FTA 5310 Selection Committee. However, the 5310 Program Manager will not participate in the evaluation of the FTA 5310 applications.

Evidence for grounds to protest nonreceipt of an FTA Section 5310 formula grant award must be established with the STPO 5310 Program Manager finding that all of the following criteria have been met:

- a) The applicable agency is deemed eligible to receive the FTA Section 5310 formula grant award.
- b) A valid and legible application has been acknowledged as received by STPO prior to the posted deadline.
- c) The FTA 5310 Selection Committee rank and evaluation returned an average score of less than 70 points.
- d) There are remaining FTA Section 5310 formula grants funds available after posted selected awards.

III. Protests or Appeals Related to the Non-Funding of FTA Section 5310 Formula Grant Awards

The following STPO internal operating procedures shall be used to fairly review and proactively respond to any protests received regarding public notification of non-award of an FTA Section 5310 formula grant program administered by HDOT.

STPO will consider written protests or objections to any public posting of FTA Section 5310 formula grant award to subrecipients received within 30 (thirty) calendar days of the posting of awards to the STPO website. Any other verbal, written or otherwise interpreted indication of subrecipient awards will be deemed ineligible to protest or appeal, as it was not publicly posted. The protester or appellant received stamp date (via hard copy or email) of the official filing, shall be the date STPO electronically or physically receives the written objection to the public posting. A protest that does not strictly comply with these protest procedures will be rejected.

An applicant may only file an appeal with STPO on the results of a non-funding recommendation of award for FTA 5310 Formula Grant Program funds. In order to be considered, an appeal must clearly identify the perceived issue with the process by which a grant application is scored and awarded. Upon receipt of a request to appeal, STPO will investigate and review the selection process to ensure that all aspects of the evaluation were performed in an appropriate manner and in compliance with FTA guidelines.

IV. Affected Parties Related to the Filing of Protests/Appeals for FTA Section 5310 Grant Awards

Affected parties may deliver statements in support of or in opposition to a protest or appeal. Any such statements must be sent to the attention of the 5310 Program Manager via email or physically delivered to STPO during its normal business hours within ten (10) business days of receipt of the protest or appeal. All materials submitted in a protest or appeal shall be considered a public record unless disclosure is prohibited by law or regulation.

When another applicant's application is the subject of the protest or appeal, STPO will notify the affected applicant(s) within five (5) business days of receiving the protest or appeal. An applicant

whose application is the subject of the protest or appeal may submit to STPO materials in response to the protest or appeal within five (5) business days of its receipt of notification of the protest or appeal. Such materials shall be electronically or physically submitted to the 5310 Program Manager with a time date and stamp as proof of delivery. STPO reserves the right to provide a courtesy copy of the submitted materials to the protestor or appellant or other affected parties.

Protests and appeals shall be addressed to:

Attn: 5310 Program Administrator
Hawaii Department of Transportation
Statewide Transportation Planning Office
200 Rodgers Boulevard
Honolulu, HI 96819
dotstp@hawaii.gov

Any communication regarding the protest/appeal between the protestor or an adversely affected applicant and STPO shall be through the 5310 Program Manager during the protest/appeal proceedings. Protestors and appellants shall not contact anyone at HDOT regarding the protest/appeal other than the 5310 Program Manager during the protest/appeal process. Violation of this prohibition on any and all communications by the protestor or appellant may result in an automatic finding of the protest/appeal to be invalid.

STPO reserves the right to reject a protest that covers an issue on which HDOT has already issued a final decision or which is untimely, such as a challenge to a determination concerning responsibility or responsiveness.

V. Initial Protest/Appeal Review by the STPO Planning and Programming Department

The 5310 Program Manager shall review each protest/appeal to determine compliance with the deadline, format, content, and notice requirements set forth in this Section. If a protest/appeal does not meet such requirements it may be rejected without further consideration. A notice of such rejection shall be sent to the protestor/appellant.

A. STPO Protest/Appeal Committee (PAC)

If resolution of the protest/appeal requires determinations on questions of fact, the 5310 Program Manager or his/her designee may appoint up to three (3) more individuals to participate on the PAC. No one who provided an official evaluation score sheet utilized to rank the 5310 Formula Grant program applicants may sit on the PAC. In such case, FTA 5310 Selection Committee members are not allowed to sit on the PAC. However, the FTA 5310 Selection Committee members may be contacted by the 5310 Program Manager on behalf of the PAC to provide clarification regarding the score sheets provided, as deemed necessary and appropriate or at the request of the PAC.

The 5310 Program Manager will act as the chairperson for the PAC. The committee will also include the Programming Section Manager, or his/her designee. The remaining members of the PAC may include other STPO support staff in the Programming Division, Project Support Division, Technical Support Division or Statewide Planning Division. If additional STPO support staff is unavailable to participate, then the Planning Program Administrator or his/her designee will serve as a committee member. The 5310 Program Manager will gather the documents that the committee will need for its investigation and prepare a memo to the PAC containing background information regarding the protest/appeal.

The PAC will review all qualifying protests/appeals in a timely manner and may interview the protestor or adversely affected applicants, if deemed necessary in order to complete its investigation. All materials included with the original protest/appeal at time of submittal will be considered. Supplemental materials filed by a protestor after the protest/appeal deadline will not be considered unless there are extenuating circumstances in the opinion of the PAC. Any protests or appeals determined to be incomplete will be rejected.

B. HDOT Attorney General Protest/Appeal Response Consideration

The HDOT Department of the Attorney General (AG) may also, at its option or upon STPO request, submit a statement regarding the protest or appeal for the record and for consideration by the STPO PAC. The 5310 Program Manager may contact the AG Office and request that an attorney be assigned to issue a determination of the protest/appeal, if deemed necessary and appropriate by the PAC. The assigned attorney must not have any known or direct connection to the applicants that are the subject of the protest/appeal.

VI. STPO Protest/Appeal Committee Decision

After an internal review by the PAC and/or the HDOT AG Office, the 5310 Program Manager or his/her designee will either sustain or reject the protest/appeal in writing. The PAC will unanimously render a decision that is in the best interest of HDOT and STPO. A redetermination letter will only be issued upon adequate provision of any necessary supporting documentation.

The PAC decision will be communicated in writing by the 5310 Program Manager to the protestor and/or the applicant(s) whose application(s) is/are the subject of the protest/appeal within sixty (60) calendar days from the date the protest/appeal was received by the STPO. If after sixty (60) days the STPO and PAC has not received essential materials requested of the protestor or appellant deemed necessary to render a decision, then the protest/appeal case will be closed and a new request must be made to reinitiate the process defined in this Section.

VII. Request for Protest/Appeal Reconsideration

Upon the 5310 Program Manager's disclosure of the decision rendered by the STPO PAC, the protestor or any party whose application is the subject of the protest/appeal may file a request for protest/appeal reconsideration. The scope of reconsideration shall be whether the protest/appeal determination was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. The request for reconsideration must identify with specificity how the protest/appeal decision was arbitrary, capricious, an abuse of discretion, or contrary to law. Any request for reconsideration that fails to state a valid basis for reconsideration, is untimely, is based on repetition of arguments previously raised, or simply expresses disagreement with the protest/appeal decision will be rejected.

A request for protest/appeal reconsideration must be directed to the 5310 Program Manager in writing, fulfill the format, content, and notice requirements set forth in this Section and be received within ten (10) calendar days from the date the protestor or adversely affected applicant receives the protest/appeal decision from the STPO. A delivery confirmation receipt of the PAC response to the protest/appeal must be time and date stamped, sent certified with return receipt or via email for purposes of determination of the turnaround time deemed necessary for a reconsideration request.

No administrative hearing will be held and no new evidence shall be offered in the reconsideration process. *(Consideration of new evidence will require provision of a new appeal subject to the provisions in this Section, and will nullify any appeal currently matriculating through this process.)*

If the Planning Program Administrator or his/her designee did not participate in the PAC, then he/she will review the request for reconsideration, previously provided materials, and either affirm or deny the protest/appeal decision within fifteen (15) calendar days from the date STPO receives the request.

If the Planning Program Administrator or his/her designee participated in the Protest/Appeal Committee, then the HDOT Director or his/her designee shall review the request of reconsideration, previously provided materials, and either affirm or deny the protest/appeal decision within fifteen (15) calendar days from the date STPO receives the request.

The decision of the HDOT Director, Planning Program Administrator or his/her designee will be communicated in writing by the 5310 Program Manager, to the protestor or appellant, and any applicant whose application is the subject of the protest/appeal.

In any event, the decision communicated in writing, and signed by the HDOT Director will be final.

VIII. Results of the Protest/Appeal

If a protest or appeal relating to a potential grant award is supported, the original Notice of FTA 5310 Formula Grant Award may be withdrawn after the deadline for protest/appeal reconsideration has passed. STPO then may issue a new Notice of Award to the affected applicants. A new protest/appeal period will then commence and the requirements of these procedures will be followed. If the protest/appeal is rejected, the original Notice of Intent to Award will stand.