



## PROTEST PROCEDURES FOR COMPETITIVE GRANT PROGRAMS

---

### I. PROTESTS

Pursuant to SANDAG Board Policies, the following procedures shall be used by SANDAG to fairly and promptly respond to any protests received regarding competitive grant programs administered by SANDAG. SANDAG will only review protests submitted by an actual or, in the case of a protest before the application due date related to the content of the solicitation (also referred to as a “call for projects”), a prospective applicant.

SANDAG will consider all protests or objections regarding the contracting process or the award of a contract received by SANDAG by 4 p.m. on the deadlines discussed below. The date of the protest filing shall be the date SANDAG electronically or physically receives the written protest. A protest that does not strictly comply with these protest procedures will be rejected.

SANDAG shall not be liable for any damages to the entity filing the protest or to any participant in the protest, on any basis, express or implied.

#### A. PROTESTS BEFORE APPLICATION DUE DATE RELATED TO THE CONTENT OF THE SOLICITATION

Protests relating to the content of the solicitation, including any protest based on the eligibility or evaluation criteria, must be filed in writing within seven (7) calendar days after the date the solicitation or addendum with the revised content is issued by SANDAG. Failure to file a protest concerning the content of the solicitation or addendum with the revised content prior to this deadline constitutes a waiver of any protest on these grounds.

#### B. PROTESTS RELATED TO DETERMINATIONS BY SANDAG OF RESPONSIVENESS OR RESPONSIBILITY PRIOR TO ISSUANCE OF THE NOTICE OF INTENT TO AWARD

If, after opening and evaluating all applications, an applicant is determined to be nonresponsive or an application is determined to be nonresponsive, a protest relating to any such determination must be filed in writing within seven (7) calendar days of receipt of notice of nonresponsiveness or nonresponsibility from SANDAG. Failure to file a protest concerning a determination of nonresponsiveness or nonresponsibility prior to this deadline constitutes a waiver of any protest on these grounds by the applicant.

In the case of a protest relating to a finding of applicant nonresponsibility, such applicant shall be entitled to present in its protest evidence rebutting the adverse evidence presented in the Notice of Non-Responsibility as well as present evidence demonstrating its qualifications to perform the grant requirements.

Also in the case of a protest relating to a SANDAG determination that an applicant is nonresponsive, the protestor’s evidence shall be presented solely in writing unless the applicant affirmatively requests an administrative hearing on the issue of responsibility in its timely submitted protest materials. In the event an applicant so requests an administrative hearing, all requirements of the initial protest materials as set forth below must be met including the timely submission of all relevant evidence, but the applicant will thereafter be afforded an administrative hearing prior to the protest decision as reflected in the paragraph entitled “Protest Decision.”

**C. PROTESTS RELATED TO THE NOTICE OF INTENT TO AWARD**

After opening and evaluating all applications, a Notice of Intent to Award will be emailed to all responsive and responsible applicants. Protests relating to the intent to award must be filed in writing within seven (7) calendar days of the Notice of Intent to Award issue date. Untimely protests will be rejected as such. If the protestor makes allegations regarding the responsiveness or responsibility of another applicant, the protestor shall concurrently email or mail with overnight delivery a copy of the protest to any applicant(s) who are the subject of the protest. A protestor may obtain the contact information for other applicants from the SANDAG Protest Administrator.

Affected applicants may deliver statements in support of or in opposition to the protest within five (5) calendar days of receipt of the protest. Any such statements must be emailed to the Protest Administrator or physically delivered to SANDAG during its normal business hours with proof of delivery to SANDAG. SANDAG will promptly forward copies of any such statements to the protestor. The SANDAG Contracts and Grants Department may also, at its option, submit a statement regarding the protest for the record and for consideration by the protest decision-maker.

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

**1. PROTEST CONTENT REQUIREMENTS FOR PROTESTS RELATED TO THE NOTICE OF INTENT TO AWARD**

A letter of protest must set forth detailed grounds for the protest and be fully supported with technical data, documentary evidence, names of witnesses, and other pertinent information related to the subject being protested. The protest also must state the law, rule, regulation, or policy upon which the protest is based. The protestor must allege or establish a clear violation of a specific law, rule, regulation, or policy that applies to SANDAG. All materials submitted in a protest shall be considered a public record unless disclosure is prohibited by law or regulation.

All protests and related statements must be emailed to the Protest Administrator or physically delivered to SANDAG during its normal business hours with proof of delivery to SANDAG. Additionally, when another applicant's application is the subject of the protest, documentation supporting the protest must be delivered to the affected applicant(s) by email or overnight delivery, with proof of delivery provided to SANDAG no later than two (2) calendar days after submission of the protest to SANDAG. Failure to notify an applicant when its application is the subject of the protest shall result in the immediate rejection of the protest without further consideration by SANDAG.

An applicant whose application is the subject of the protest may submit to SANDAG materials in response to the protest within five (5) calendar days of its receipt of the protest. Such materials shall be emailed or physically delivered by overnight delivery to the Protest Administrator. A copy of the materials also must be emailed or physically delivered by overnight delivery to the protestor.

Protests shall be addressed to:

Contracts and Grants Department, Attn: Protest Administrator  
SANDAG Solicitation No. [Add Solicitation Number]  
San Diego Association of Governments  
401 B Street, Suite 800  
San Diego, CA 92101  
protestadministrator@sandag.org

Communications to SANDAG concerning the protest by the protestor or an adversely affected applicant must only be directed through the Protest Administrator or his/her designee. Violation of this prohibition on all other communications may result in an automatic finding of the protest to be invalid. Any protests determined to be incomplete will be rejected.

## **II. INITIAL PROTEST REVIEW BY THE SANDAG CONTRACTS AND GRANTS DEPARTMENT**

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

## **III. RESOLUTION OF PROTESTS REQUIRING FACTUAL DETERMINATIONS**

### **A. PROTEST COMMITTEE**

If resolution of the protest requires determinations on questions of fact, the Protest Administrator or his/her designee will appoint two or more individuals to participate on a Protest Committee. No one may sit on the Protest Committee that has a known and direct connection to the solicitation that is the subject of the protest. The Protest Administrator also will appoint a chairperson for the Protest Committee. The Protest Administrator will gather the documents that the Protest Committee will need for its investigation and prepare a memo to the Protest Committee containing background information regarding the protest.

The Protest Administrator will also notify the SANDAG Executive Team and request that a member of the Executive Team or designee issue the determination of the protest. He/she will not have any known or direct connection to the procurement that is the subject of the protest.

Any communication regarding the protest between the protestor or an adversely affected applicant and SANDAG shall be through the Protest Administrator during the protest proceedings. Protestors shall not contact anyone at SANDAG regarding the protest other than the Protest Administrator during the protest process.

### **B. REPLY TO PROTEST**

The Protest Committee will review all qualifying protests in a timely manner and may interview the protestor or adversely affected applicants if deemed necessary in order to complete its investigation. The Protest Committee will prepare a recommendation regarding the protest, in writing, to the appointed designee of the SANDAG Executive Team within fourteen (14) calendar days of the date of receipt of the protest. All materials included with the original protest at time of submittal will be considered. Supplemental materials filed by a protestor after the protest deadline will not be considered unless there are extenuating circumstances in the opinion of the Protest Committee. Documents submitted by a protestor or other interested party will be considered a public record unless disclosure is prohibited by law or regulation.

## **IV. RESOLUTION OF PROTESTS NOT REQUIRING FACTUAL DETERMINATIONS**

To the extent resolution of a protest does not require determination of questions of fact but instead only requires determination of questions of law, the SANDAG Office of General Counsel shall serve as the Protest Committee and will prepare a recommendation regarding the protest, in writing, to the designee of the SANDAG Executive Team within fourteen (14) calendar days of the date of receipt of the protest.

## **V. PROTEST DECISION**

After receipt of the protest recommendation, the designee of the SANDAG Executive Team will either sustain or reject the protest in writing. The SANDAG Executive Team designee will render a decision that is in the best interest of SANDAG.

For protests regarding non-responsibility where the protestor has properly requested an administrative hearing as set forth above, the SANDAG Executive Team designee shall act as the hearing officer and shall consider the evidence submitted and testimony presented at the hearing in rendering the decision.

The protest decision will be communicated in writing by the Protest Administrator to the protestor and/or the applicant whose application is the subject of the protest.

## **VI. REQUEST FOR PROTEST RECONSIDERATION**

Upon receipt of a decision from the Protest Administrator, the protestor or any party whose application is the subject of the protest may file a request for protest reconsideration. The scope of reconsideration shall be whether the protest determination was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The request for reconsideration must identify with specificity how the protest 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 decision will be rejected.

A request for protest reconsideration must be directed to the Protest Administrator in writing, fulfill the format, content, and notice requirements set forth in this Section and be received within seven (7) calendar days from the date the protestor or adversely affected applicant receives the protest decision from SANDAG. The request and supporting materials must be either emailed to the Protest Administrator or physically delivered to SANDAG by overnight delivery.

No administrative hearing will be permitted and no new evidence shall be considered in the reconsideration process.

An applicant whose application is the subject of a request for protest reconsideration shall have the right to respond to the request by submitting a written response to SANDAG within three (3) calendar days of receiving the request for reconsideration. The applicant shall submit its response to the Protest Administrator by email or overnight delivery. The applicant shall provide a copy of its response to the protesting party by email or overnight delivery at the time of submitting its response to SANDAG.

The Executive Director or designee will review the request for reconsideration materials, and either affirm or deny the protest decision within fourteen (14) calendar days from the date SANDAG receives the request. The decision of the Executive Director or designee will be communicated in writing by the Protest Administrator, to the protestor, and any applicant whose application is the subject of the protest. The decision of the Executive Director or designee will be final.

## **VII. RESULTS OF THE PROTEST**

If a protest relating to a potential grant award is sustained, the original Notice of Intent to Award may be withdrawn after the deadline for protest reconsideration has passed. SANDAG then may issue a new Notice of Intent to Award to one or more different applicants. A new protest period will then commence and the requirements of these procedures will be followed. If the protest is rejected, the original Notice of Intent to Award will stand.

## **VIII. PROTEST ON PROCUREMENTS WITH FEDERAL FUNDING**

Pursuant to federal agency guidance, SANDAG is responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of its contracting processes. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. In the case of contracts with grant awards that will use federal funds, protests may be reviewed by the federal agency providing funds only when the issue is a compelling federal concern. If review is granted by the federal awarding agency, the federal awarding agency will not substitute its judgment for that of SANDAG unless the matter is primarily a federal concern. Violations of law should be referred to the local, state, or federal authority having proper jurisdiction. See, 2 C.F.R. § 200.318(k). Alleged violations of a specific federal requirement that provides an applicable complaint procedure must be submitted and processed in accordance with that federal regulation. For example, see the Buy America Requirements at 49 CFR 661.15, and requirements for Participation by Minority Business Enterprise in DOT Programs at 49 CFR 23.73.

7/29/2020