



PROTEST PROCEDURES FOR PROCUREMENTS*

I. PROTESTS

Pursuant to the requirements set forth in FTA Circular 4220.1F, "Third Party Contracting Requirements," when applicable, and SANDAG Board Policies, the following procedures shall be used by SANDAG to fairly and promptly respond to any protests received regarding third-party contracts or the contracting process. SANDAG will consider all protests or objections regarding the contracting process or the award of an Agreement received by SANDAG by 4 p.m. on the deadlines discussed below. SANDAG will review only protests submitted by an actual or prospective Proposer. Protests by prospective subcontractors will be rejected. A protest by any adversely affected Proposer must be made in writing and must be mailed or hand delivered to SANDAG. A protest which does not strictly comply with the SANDAG protest procedures will be rejected.

A. Protests Before Bid/Proposal Opening

Protests relating to the content of the solicitation (i.e., RFP, IFB, RFQ), including protests related to DBE/UDBE requirements, must be filed within five (5) business days after the date the solicitation or addendum with the revised content is released to the public by SANDAG. Failure to file a protest concerning the content of the solicitation or addendum prior to this deadline constitutes a waiver of any protest on these grounds.

B. Protests Related to Determination of Responsiveness

In the event the RFP contains a DBE/UDBE goal and SANDAG makes a determination that Proposer has not met the goal or good faith effort requirements set forth in this RFP, SANDAG will send the Proposer a Notice of Non-Responsiveness. Protests relating to any Notice of Non-Responsiveness must be filed within five (5) business days after the date of such notice. Failure to file a protest concerning the non-responsiveness determination prior to this deadline constitutes a waiver of any protest on these grounds and SANDAG shall not be obligated to send Proposer any further notices.

* Not for use with DBE-related complaints

C. Protests After Bid/Proposal Due Date

After Proposers are shortlisted and/or selected for negotiations, notices will be sent to all relevant Proposers. Protests relating to failure to make the shortlist must be filed within five (5) business days following protester's receipt of a notice regarding the shortlisting. Protests relating to the intent to make an award must be filed within five (5) business days following protester's receipt of the notice regarding the intent to negotiate. The date of filing shall be the date SANDAG receives the protest. Untimely protests will be rejected. If deemed necessary, SANDAG shall notify all Proposers of record that a protest has been filed and the award has been postponed until further notice. If necessary, Proposers will be asked to extend the time for acceptance of their proposal in order to avoid the need for readvertisement of the solicitation.

D. Protest Contents

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. Protests concerning the relative weight of the evaluation criteria or the formula used in assigning points to make an award determination will be rejected. The protester must allege or establish a clear violation of a specific law, rule, regulation, or policy. If the protester considers that the protest contains proprietary material that should be withheld, a statement advising of this fact must be affixed to the front page of the protest document, and alleged proprietary information shall be so identified wherever it appears. Protests shall be emailed to:

Protestadministrator@sandag.org

Reference: SANDAG Contract Solicitation No. Solicitation #

E. Role Of The SANDAG Office of General Counsel and Protest Administrator

If a protest raises solely a question 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 SANDAG Chief Deputy Executive Director within ten (10) business days. Upon receipt of an adverse decision, the protester may file a request for protest reconsideration pursuant to subsection I below.

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 written notice of such rejection shall be sent to the protester.

If the protest requires resolution of questions of fact, the Protest Administrator, his/her designee will appoint individuals to participate on a Protest Committee from an established list of potential Protest Committee members. The Protest Administrator will endeavor to appoint at least one of the Protest Committee members from an outside agency, and no one may sit on the Protest Committee that has a known and direct connection to the procurement 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. **Any communication regarding the protest between the protester and SANDAG shall be through the Protest Administrator**

during the protest proceedings. Protesters may not contact anyone at SANDAG other than the Protest Administrator or Office of General Counsel during the protest process.

F. Protest Committee

The Protest Committee shall ensure the protest was received within the timeline specified and review the protest to determine if it itemizes in appropriate detail each matter contested as well as any factual reason(s) for the requested protest. The Committee chairperson shall schedule the date of the Protest Committee meeting, contact the Committee panel members, and distribute all protest documentation.

G. Reply To Protest

The Protest Committee will review all qualifying protests in a timely manner and may hold an informal hearing if deemed necessary in order to complete its investigation. The Protest Committee will prepare a recommendation regarding the protest, in writing, to SANDAG's Chief Deputy Executive Director within ten (10) business 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 protester after the protest deadline will not be considered unless there are extenuating circumstances in the opinion of the Protest Committee. Protest documents will not be withheld from any interested party outside of SANDAG, with the exception that information will be withheld when required by law or regulation. The Chief Deputy Executive Director or his/her designee will either sustain or reject the protest in writing based upon the recommendation of the Protest Committee and the best interests of SANDAG. This decision will be communicated in writing to the protestor and/or the party whose proposal is the subject of the protest and delivered by email or overnight delivery.

H. Request For Protest Reconsideration

Upon receipt of an adverse decision by the Protest Administrator or the Chief Deputy Executive Director, the protester may file a request for protest reconsideration. A request for protest reconsideration must be directed to the Executive Director in writing with a copy sent to the Protest Administrator, comply with the content and notice requirements in subparagraph D "Protest Contents" above and be received within five (5) full business days from the date the protester receives the protest decision from SANDAG. The Executive Director will respond to the request for protest reconsideration within ten (10) full business days of its receipt. The decision of the Executive Director will be in writing and final. The decision will be sent to the protestor and/or the party whose proposal is the subject of the protest. No further protests will be heard by SANDAG.

I. Results Of The Protest

If the protest relating to a contract 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 a different bidder/Proposer and a new protest period will commence using the same timelines discussed above. If the protest is rejected, the original Notice of Intent to Award will stand and SANDAG will continue with contract negotiations with the awardee.

J. Federal Transit Administration Requirements Not Applicable if no FTA Funding

1. FTA Review of Protests

- a. In the case of contracts funded by the FTA, the FTA will review only protests regarding the alleged failure of SANDAG to have written protest procedures or alleged failure to follow such procedures.
 - b. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities. Alleged violations of a specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation. See Buy America Requirements, 49 C.F.R. 661.15; Participation by Minority Business Enterprise in DOT Programs, 49 C.F.R. 23.73.
 - c. The FTA will review only protests submitted by an interested party defined as an actual or prospective bidder or Proposer whose direct economic interest would be affected by the award of the contract or by failure to award the contract in accordance with FTA Circular 4220.1F. A subcontractor does not qualify as an "interested party." (See FTA Circular 4220.1E, Chapter VII, Section I (1)(c))."
2. Time for Filing
- a. Protesters shall file a protest with the FTA not later than five (5) business days after a final decision is rendered under the SANDAG protest procedure. A copy of any protest documents filed with the FTA must be provided concurrently to SANDAG. In instances where the protester alleges that SANDAG failed to make a final determination on the protest, protesters shall file a protest with the FTA not later than five (5) business days after the protester knew or should have known of the failure of SANDAG to render a final determination on the protest.
 - b. SANDAG shall not award a contract for five (5) business days following its decision on a bid protest except in accordance with the provisions and limitations of subparagraph 6. After five (5) business days, SANDAG shall confirm with the FTA that the FTA has not received a protest on the contract in question.
3. Submission of Protest to the FTA
- a. The protester must exhaust its administrative remedies by pursuing the recipient's protest procedures to completion before appealing the recipient's decision to the FTA. (FTA Circular 4220.1F, Page VII-3, November 1, 2008).
 - b. Protests should be filed with the FTA Region 9 office and a copy must be sent to SANDAG by the protester.
 - c. The protest filed with the FTA shall:
 - Include name and address of protester
 - Identify SANDAG as the grantee, the SANDAG Contract Administrator, and number of the contract solicitation
 - Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible

- Include a copy of the local protest filed with SANDAG and a copy of the SANDAG decision, if any

4. SANDAG Response

- a. The FTA shall notify SANDAG in a timely manner of receipt of a protest.
- b. SANDAG shall submit the following information not later than ten (10) business days after receipt of notification by the FTA of the protest:
 - a copy of SANDAG's protest procedure
 - a description of the process followed concerning the protester's protest
 - any supporting documentation
- c. SANDAG shall provide protester with a copy of the above submission.

5. Protester Comments

The protester must submit any comments on the SANDAG submission not later than ten (10) business days after the protester's receipt of the SANDAG submission.

6. *Withholding of Award*

When a protest has been timely filed with SANDAG before award, SANDAG shall not make an award prior to five (5) business days after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless SANDAG determines that:

- a. The items to be procured are urgently required;
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. Failure to make prompt award will otherwise cause undue harm to SANDAG or the federal government.

The FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

7. FTA Action

Upon receipt of the submissions, the FTA will either request further information or a conference among the parties, or will render a decision on the protest.