

San Bernardino County Transportation Authority	<b>Policy</b>	11007
Adopted by the Board of Directors	Revised	05/01/24
<b>Vendor Protest</b>	Revision No.	2

**Important Notice: A hardcopy of this document may not be the document currently in effect. The current version is always the version on the SBCTA Intranet.**

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## I. PURPOSE

This policy provides guidelines for the submittal and evaluation of protests relating to all procurements. SBCTA shall ensure to the extent reasonably possible, the uniform and timely consideration of all protests received by SBCTA pursuant to this policy.

In order to be considered, a protest must be filed in a timely manner, as described herein, must satisfy all the applicable requirements described in this policy, and must be brought by an Interested Party as defined in Paragraph II. The failure to file a protest within the times provided herein, or to comply with the applicable requirements, shall constitute a waiver of the right to protest and bar the bidder or protestor from relief by protest.

## II. DEFINITIONS

The following definitions apply to this policy.

**Interested Party** – An actual proposer/bidder whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. Interested parties do not include subcontractors or suppliers of an actual or prospective proposer/bidder. Interested parties also do not include individual joint venturers, partners or members of a team of bidders or proposers who are acting individually or independently from the joint venture, partnership or team.

**Procurement Manager** – The person designated by SBCTA who is responsible for managing the contracting and procurement function.

**File or Submit** – The date of receipt of a written protest by SBCTA.

**Receipt of Protest** – The date of receipt of the Protest will be the date on which SBCTA receives the protest package.

## III. REFERENCES

[United States Department of Transportation, Federal Transit Administration.](#)

[FTA Circular 4220.1f, Third Party Contracting Guidance.](#)

Note: Refer to the revision in effect at the time of protest.

## IV. BASIS OF PROTEST

### A. Prior to Submittal Deadline for Bids/Proposals

Prior to the operative deadline for submittal of bids/proposals by SBCTA, a protest may be filed with SBCTA on the basis of solicitation package for one or more of the following grounds:

- Content of the solicitation package.
- The solicitation package violates local, state, or federal law or regulation.

Any bidder or proposer that does not protest the content of the solicitation package, including on the grounds that it violates local, state or federal laws or regulations, within the time allowed for such protests set forth in VII(A), below, shall thereafter be deemed to have waived and be barred from asserting any

deficiency, shortcoming or other invalidity to the content of the solicitation package, including in any subsequent claim or cause of action against SBCTA in the event a contract is awarded and entered into by the bidder or proposer.

#### **B. After Submittal Deadline for Proposals (Request For Proposals)**

After the operative deadline for receipt of proposals by SBCTA and after an action relating to the selection of a consultant or contractor by the Evaluation Committee but prior to the award of a contract by the Board of Directors, or designated awarding authority, a protest may be filed with SBCTA on the basis of one or more of the following:

- SBCTA failed to adhere to the evaluation process set forth in the solicitation package.
- SBCTA failed to follow its own procurement policies and procedures.
- SBCTA violated a specific law, rule, or regulation in the procurement process.

SBCTA will reject protests concerning the criteria used in the evaluation, the relative weight of the evaluation criteria, or the formula used in assigning points (if any) to make an award recommendation if the bidder or proposer did not protest the content of the solicitation package pursuant to and in accordance with the protest procedures and timelines applicable thereto.

SBCTA will reject protests under this section that are not filed in the time and manner provided in these protest procedures, and any proposer that fails to file a protest under this section within the time allowed for such protests set forth in VII(B), below, shall thereafter be deemed to have been waived and be barred from asserting any deficiency, shortcoming or other invalidity, including in any subsequent claim or cause of action against SBCTA in the event a contract is awarded and entered into by the proposer.

#### **C. After Submittal Deadline for Bids (Invitation For Bids)**

After the operative deadline for receipt of a bid, but prior to award of a contract by the SBCTA Board of Directors or designated awarding authority, a protest may be filed with SBCTA on the basis of one or more of the following:

- SBCTA failed to follow its own procurement policies and procedures.
- SBCTA violated a specific law, rule or regulation in the procurement process.

SBCTA will reject protests that are not filed in the time and manner provided in these protest procedures.

SBCTA will reject protests under this section that are not filed in the time and manner provided in these protest procedures, and any bidder that fails to file a protest under this section within the time allowed for such protests set forth in VII(C), below, shall thereafter be deemed to have waived and be barred from asserting any deficiency, shortcoming or other invalidity, including in any subsequent claim or cause of action against SBCTA in the event a contract is awarded and entered into by the bidder.

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### **V. FILING OF PROTEST**

#### **A. Filing Written Protest**

An Interested Party wishing to protest a matter involving a procurement or proposed contract award shall file a written protest with the Procurement Manager. At a minimum, the written protest must include the following:

- Name and address of the Interested Party;
- Identification of the proposed procurement or contract;
- Description of the nature of the protest;
- A detailed statement of the legal and/or factual grounds for the issue(s) identified in the protest, including reference to the provision(s) of the solicitation, regulations, and/or laws upon which the protest is based; and any technical data, documentary evidence, names of witnesses or other pertinent information supporting the basis for the protest;
- A statement of the desired resolution to the protest by the Interested Party;
- Signature of a properly authorized representative of the Interested Party.

## **B. Failure to Comply**

Failure to comply with any of the requirements of this section may be grounds for dismissal of the protest.

The Interested Party may withdraw its protest at any time before SBCTA renders a decision by submitting a written request to the Procurement Manager.

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## **VI. FILING OF PROTEST**

All protests must be submitted in writing to:

**San Bernardino County Transportation Authority**  
**1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor**  
**San Bernardino, California 92410**  
**Attention: Procurement Manager – Vendor Protest**  
**Solicitation/Contract Number: \_\_\_\_\_**

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## **VII. PROTEST SUBMITTAL DEADLINE**

### **A. Prior to Submittal Deadline for Bid/Proposal**

A protest filed to the content of the solicitation package must be received by the Procurement Manager within five (5) business days after SBCTA provides responses to the questions/requests for approved equals. If no questions/requests for approved equals are received by SBCTA, the protest must be filed within five (5) business days of the closing date for the question/request for approved equals.

### **B. After Submittal Deadline for Proposals (Request For Proposals)**

After opening proposals, SBCTA will evaluate the proposals and determine which proposer(s) shall be recommended to the Board of Directors or designated awarding authority, for award of a contract. Once staff has determined which proposer(s) will be recommended to the designated awarding authority for award, a Notice of Intent to Award will be sent to all proposers.

Protests must be filed within five (5) business days from the issue date on the Notice of Intent to Award.

### **C. After Submittal Deadline for Bids (Invitation For Bids)**

1. Any protest and demand for hearing regarding a non-responsibility determination by SBCTA shall be filed within three (3) business days from the date SBCTA gives notice to the bidder of the non-responsibility determination at issue.
  2. All other protests under this section must be filed in accordance with the following deadlines:
    - a. For non-Federal bids, protests must be filed within three (3) business days from date of bid opening.
    - b. For Federal bids, protests must be filed within three (3) business days from the date disadvantaged business enterprise documents are due.
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## **VIII. PROTEST REVIEW PROCESS**

If the protest is determined to be timely and meets the criteria identified in the preceding Paragraphs V, VI and VII, this process will be followed:

- No additional material will be allowed to be submitted unless specifically requested by the Procurement Manager.
  - The Procurement Manager will review all material submitted and will meet and collaborate with General Counsel, Department Director and Executive Director on the basis of the protest. Based on that meeting, the Procurement Manager will render a decision within thirty (30) days after the receipt of the protest, or prior to contract award, whichever is earlier.
  - The Procurement Manager will consider only those specific issues addressed in the written protest.
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- For protests related to the solicitation package received prior to the operative submittal deadline, the Procurement Manager will issue a written decision prior to opening of bids/proposals,
- The decision of the Procurement Manager is final.

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## **IX. PROTESTS RELATING TO COMPETITIVE NEGOTIATION PROCUREMENTS FOR SPECIALIZED RAIL TRANSIT EQUIPMENT AND RELATED ELECTRONIC EQUIPMENT AND APPARATUS**

For protests relating to the procurement of specialized rail transit equipment, including rail cars, or computers, telecommunications equipment, fare collections equipment, microwave equipment, and other related electronic equipment and apparatus, by competitive negotiation in lieu of sealed bids, as provided in Public Utilities Code § 130238, the following provisions shall apply, in compliance with California Public Contract Code sections 20216 and 20217:

### **A. Deadline and Requirements for Protest:**

1. Protests based on the content of the solicitation shall be filed with SBCTA within 10 calendar days after the solicitation is first advertised.
2. Any person who submitted a bid/proposal prior to the operative submittal deadline may protest the recommended award on any ground not based on the content of the solicitation by filing a protest with SBCTA within 15 calendar days after the staff recommendation for award has been made available to the public.
3. Protests shall comply with the requirements set forth in SBCTA Policy 11007 V & VI, above.

### **B. Protest Review Process:**

1. For protests related to the solicitation package received prior to the operative submittal deadline, the protesting party shall have an opportunity to appear and be heard before the Procurement Manager prior to the opening of bids/proposals, SBCTA will issue a written decision prior to opening of bids/proposals, The protest may be renewed by refiling the protest with SBCTA within 15 calendar days after staff's recommendation for award has been made available to the public.
2. For protests on any ground not based on the content of the solicitation or for renewed protests based on the contents of the solicitation, the protesting party shall have an opportunity to appear and be heard before the designated SBCTA decision maker prior to the final award.

## **X. PROTEST RELATING TO FEDERALLY FUNDED PROCUREMENT**

If procurement is funded in whole or in part by the Federal Transit Administration (FTA), the protestor may pursue the FTA Protest procedure as defined in FTA Circular 4220.1, Third Party Contracting Guidance. Refer to the revision in effect at the time of protest.

Review of protests by FTA may be limited to:

- SBCTA's failure to have or follow its protest procedures;
- SBCTA's failure to review the complaint or protest;
- Violations of federal law or regulation.

Protestors should consult FTA Circular 4220.1 for a complete description of the FTA procedures and the grounds for protest appeal.

- An appeal to FTA must be received by the FTA regional or headquarters office within five (5) business days of the date the protestor learned or should have learned of an adverse decision by SBCTA or other basis of appeal to FTA.

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## XI. RESPONSIBILITIES

### A. Staff

1. In the event of a protest, staff must follow the current Vendor Protest Policy in effect at the time the protest is filed.
2. Upon receipt of a vendor protest, staff must send a copy of the vendor protest to the Procurement Manager, General Counsel, responsible Executive Staff member, and Executive Director.

### B. Procurement Manager

1. Review the protest and make a written determination whether:
  - a) All filing dates have been met;
  - b) The protest contains the required information as identified in this procedure; and
  - c) The basis of the protest meets the requirements as identified in this procedure.

If any of the criteria is not met, the protest will not be considered and a letter dismissing the protest will be sent to the vendor by the Procurement Manager.

2. If the procurement that is being protested is federally funded, notify, as appropriate, either:
  - a) The Federal Transit Administration, or
  - b) Caltrans.
3. Determine a uniform review process had been provided for all vendors who file a protest.
4. Review the protest and prepare a receipt of protest letter to the vendor.
5. Meet with General Counsel, Department Director and Executive Director to review the protest and all the material submitted with the protest and prepare a written summary and decision on the merits of the protest within the 30 days from receipt of the protest.
6. Send the summary and decision to General Counsel for review prior to sending to the vendor.
7. Include all documents in the contract file.

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## XII. REVISION HISTORY

Revision No.	Revisions	Adopted
0	This document was previously published as SANBAG Procedure 11007 approved by the SANBAG Executive Director on 4/18/11. This Policy 11007 was approved by the Board of Directors on 2/5/14 (Agenda Item 7) and replaces Procedure 11007, which is now obsolete.	02/05/14
1	Revised to be consistent with SB1305. Change approved by the Board on January 4, 2017, Agenda Item 6.	01/04/17
2	Revised to update Contracts Manager to Procurement Manager, to clarify the Protest period for (1) protests submitted prior to bid/proposal submittal, (2) protest submitted after bid/proposal submittal, (3) timely filing of a protest and (4) incorporate requirements of PCC20216 for transit operations procurements. Agenda Item 32	05/01/24