



NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

TITLE: BID PROTEST PROCEDURE	PROCUREMENT POLICY NO. 10
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I. PURPOSE

The purpose of this document is to establish procedures for processing protests by Interested Parties regarding Northern Indiana Commuter Transportation District (District) procurement decisions.

II. POLICY

A. The District’s review of any protest will be limited to violations of federal law, federal regulations, state law, state regulations, or the District written policies. Protests must be filed within the time limits set forth at Section VI in order to receive consideration. An untimely protest or request for reconsideration may be considered at the sole discretion of the Chief Financial Officer or the reviewing official in the following circumstances:

1. Good cause based on a compelling reason beyond the protestor’s control.
2. The fault of the District in the handling of the protest submission.
3. The protest raises issues significant to procurement practice or procedure.
4. A court of competent jurisdiction requests, expects, or otherwise expresses interest in the District’s decision.

B. Material submitted by a protestor will not be withheld from any interested party outside the District or from any Government agency which may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. The District shall, upon request, make available to any interested party, information bearing on the substance of the protest which has been submitted by the protestor, interested parties, or the District. If the protestor considers that their bid and/or their protest documentation contains proprietary material which should be withheld, a statement advising of this fact, and the reasons therefore, must be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

C. When a protest has been timely filed before award of a contract, the District will not award a contract prior to the resolution of the protest unless the District determines in its sole discretion, that:

1. The items to be procured are urgently required;
2. Delivery or performance will be unduly delayed by failure to make the award promptly;
or,
3. Failure to make prompt award will otherwise cause undue harm to the District or the federal or state government.

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- D. No award is to be made during the pendency of a protest unless such award is approved in advance by the Chief Financial Officer or, in circumstances where the award is in excess of the authority of the Chief Financial Officer, the President.
- E. Reconsiderations of the District’s decisions may be granted at the discretion of the reviewing official. The reviewing official for decisions by the Chief Financial Officer is the President. The reviewing official for decisions by the President is the Board Chairman. Any such request shall be consistent with the need for prompt resolution of the matter.
- F. The District may refuse to decide any protest or request for reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such a court. The foregoing shall not apply where the court requests, expects, or otherwise expresses interest in the District’s decision.
- G. The failure of a protestor to comply with the time limits stated in this procedure may result in denial of the protest without consideration of the alleged merits.

III. DEFINITIONS

Bid: Includes the term “offer” or “proposal” as used in the context of any procurement.

Days: The hours of 9:00 a.m. to 5:00 p.m. (CST) Monday through Friday, except holidays.

File or Submit: The delivery of a document to the District for notification, consideration, and/or judgment with an effective date defined as the date shown on the date stamp receipt affixed by the District administrative personnel.

Interested Party: All bidders on the contract or procurement including a subcontractor or supplier at any tier who shows that he/she has a substantial economic interest in a provision of the Request for Bid, Request for Quotation (RFQ) or the Request for Proposals (RFP) or in the interpretation of such a provision.

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IV. RESPONSIBILITIES

<u>Responsibility</u>	<u>Action</u>
Project Manager Purchasing Manager Manager of Grants	1. Serves as action officer with regard to District's response. Prepares complete report for the Chief Financial Officer, President, or Board Chairman, detailing the procurement which is the subject of the protest.
Senior Attorney	2. Reviews report by action officer for legal sufficiency and provides opinion regarding facts and conclusions. Reviews and prepares legal opinion regarding all requests for reconsideration.
Chief Financial Officer	3. Serves as agency addressee for filing of bid protest. Assigns action officer for response to protest. Reviews recommendations, decides on resolution, and advises interested proper parties of decision. In cases of conflict given the involvement of the Chief Financial Officer, the President will perform these duties.
President/Board Chairman	4. Reviews and resolves requests for reconsideration. In those circumstances where this is a conflict arising from the involvement of the President, the Board Chairman will perform this duty.

V. INSTRUCTIONS FOR FILING OF PROTEST

<u>Responsibility</u>	<u>Action</u>
Protestor	<p>1. Protests and requests for consideration shall be filed with:</p> <p style="text-align: center;">Chief Financial Officer NICTD 33 East U.S. Highway 12 Chesterton, IN 46304-3514</p> <p>and shall include:</p> <ol style="list-style-type: none"> a. A statement that clearly identifies that the document submitted constitutes a formal protest; b. The name and address of the protestor; c. The project name, and if applicable, the grant, project number and the number of the bid;

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- d. A statement of the grounds for protest and any supporting documentation. The protestor must submit any and all relevant documentation at this time. Additional materials in support of an initial protest will only be considered if filed within the time limits specified;
- 2. No formal briefs or other technical forms of pleading or motion are required, but a protest and other submission should be concise, logically arranged and clear;
- 3. If the protestor believes that the protest contains proprietary material which should be withheld, a statement advising of this fact, and the reason therefore, must be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

VI. PROVISIONS

The requirement for timely filing of a bid protest with the District will depend upon the type of protests involved. The District will consider the following three (3) types of protests by interested parties.

A. Types of Protests and Timing

1. Protests Regarding Solicitation

Any bid protest regarding the solicitation by the District must be filed no later than five (5) days before the opening of bids.

This type of protest includes any claim that the bid solicitation contained exclusionary or discriminatory specifications, any challenge to the basis or selection process that the basis or selection process violates applicable federal law, state law, federal regulations, state regulations, or the District's regulations or policies, or that the District failed to follow its Procurement Regulations in the solicitation of bids.

2. Protests Regarding Bid Opening and Evaluation

Any bid protest regarding the rejection or non-selection of bids by the District at or after the time of bid opening must be filed with the District no later than five (5) days after the opening of bids. This type of protest includes any challenge to determination by the District of the responsiveness of a bid or the responsibility of a bidder, or any claim that the evaluation of bids violated federal law, state law, federal regulations, state regulations, or the District regulations or policies.

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3. Protests Regarding Award of Contract

All bidders/proposers will be notified of the District’s selection. Any protest regarding the District’s intent to award the contract must be filed with the District in writing no later than seven (7) days after the date of the District’s notice regarding the selected awardee. If no protest is received within the seven (7) day period, the District will formally award the contract.

B. The District’s Response

The District will notify the protestor upon timely receipt of a bid protest and may, where appropriate, request additional information from the protestor. The District may, in its discretion, meet with the protestor to review the matters raised by the protest. The District’s consideration of the particular types of protests will, except as otherwise provided in Paragraph 2 of this subsection, be in accordance with the following provisions:

1. Protests Regarding Solicitation

Upon receipt of a timely filed protest regarding the solicitation, the District will postpone the opening of bids until resolution of the protest.

If the protest regarding the solicitation involves a claim of unduly restrictive or exclusionary specifications, the District will, in evaluating the protest, consider both the specific need of the District for the feature or item challenged and any effects on competition of including the specification regarding that feature or item. If the District determines, in its sole discretion, that such feature or item was included in the specification in order to meet justifiably reasonable and valid needs of the District and was not unduly restrictive of competition or designed to exclude a particular competitor, then the District will deny the protest.

2. Protests Regarding Bid Opening

Upon receipt of a timely filed protest regarding the opening of bids, the District will suspend its evaluation of all bids opened until resolution of the protest if the District determines that the protestor has established that:

- a. There are reasonable doubts regarding the responsiveness of a bid, or;
- b. The responsibility of a bidder, or;
- c. Regarding the District’s compliance with federal law, state law, federal regulations, state regulations, or the District’s regulations.

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3. Protests After the Intent to Award

Upon receipt of a timely filed protest regarding the intent to award a contract, the District will not issue the contract until the resolution of the protest if the District determines that the protestor has established a prima facie case that the contract will be awarded fraudulently or in violation of that federal law, state law, federal regulations, state regulations, or the District procurement regulations or policies.

C. Decisions by the District

As indicated above, will usually suspend the procurement process upon receipt of a bona fide bid protest. However, the District reserves the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or issue a contract in the following cases:

1. Where the item to be procured is urgently required;
2. Where the District determines that the protest was vexatious or frivolous; or,
3. Where delivery or performance will be unduly delayed, or other undue harm will occur, by failure to make the award promptly.

After review of a bid protest submitted under this section, the District will issue a written decision on the basis of the information provided by the protestor, the results of any meeting with the protestor, and the District's own investigation. If the protest is upheld, the District will take appropriate action to correct the procurement process and protect the rights of the protestor. This may include, but is not necessarily limited to, re-solicitation of bids, revised evaluation of bids or the District determinations, or termination of the contract. If the protest is denied, the District will lift any suspension imposed and proceed with the procurement process or the contract, as the case may be.

D. NICTD will advise FTA of any protests of procurements containing FTA funding and keep FTA advised of the outcome of the protest.

VII. QUESTIONS

Questions regarding the application or interpretation of this policy may be submitted to:

Northern Indiana Commuter Transportation District
 Attention: Senior Attorney
 33 East U.S. Highway 12
 Chesterton, IN 46304-3514
 Telephone: (219) 926-5744; Fax: (219) 929-4438

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