

San Bernardino Associated Governments	<b>Policy</b>	11007
Adopted by the Board of Directors	Revised	2/5/14
<b>Vendor Protest</b>	Revision No.	0

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

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**I. PURPOSE**

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

**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, or joint venturers acting independently of a joint venture.

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

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

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

**III. REFERENCES**

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

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

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

**IV. BASIS OF PROTEST**

**A. Request For Proposals**

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

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

SANBAG 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.

## **B. Invitation For Bids**

A protest may be submitted after the receipt of bids by SANBAG but prior to award of a contract by the SANBAG Board of Directors or designated awarding authority on the basis of one or more of the following:

- SANBAG failed to follow its own procurement policies and procedures; or
  - SANBAG violated a specific law, rule or regulation in the procurement process.
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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 Contracts 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 SANBAG renders a decision by submitting a written request to the SANBAG Contracts Manager.

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## **VI. SUBMITTAL OF PROTEST**

All protests must be submitted in writing to:

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

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## **VII. PROTEST SUBMITTAL DEADLINE**

### **A. Request For Proposals**

After opening proposals, SANBAG will evaluate the proposals and determine which proposer(s) shall be recommended to the SANBAG Board of Directors or designated awarding authority, for award of a contract. Once SANBAG 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.

1. Protests must be filed within five (5) business days from the issue date on the Notice of Intent to Award.
2. The date of filing shall be the date SANBAG receives the protest.

### **B. Invitation For Bids**

1. Protests must be filed within three (3) business days from date of bid opening.
2. The date of filing shall be the date SANBAG receives the protest.

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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 Contracts Manager.
- The Contracts Manager will review all material submitted and will meet and collaborate with SANBAG's General Counsel, Department Director and Executive Director on the basis of the protest. Based on that meeting, the Contracts Manager will render a decision within thirty (30) days after the receipt of the protest.
- The Contracts Manager will consider only those specific issues addressed in the written protest.
- The decision of the Contracts Manager is final.

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## IX. 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 Guidelines. Refer to the revision in effect at the time of protest.

Review of protests by FTA may be limited to:

- SANBAG's failure to have or follow its protest procedures;
- SANBAG'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 SANBAG or other basis of appeal to FTA.

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## X. RESPONSIBILITIES

### A. SANBAG 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 SANBAG staff must send a copy of the vendor protest to SANBAG's Contracts Manager, General Counsel, responsible Executive staff member, and Executive Director.

### B. SANBAG Contracts Manager

1. Review the protest and make a determination that:
  - a) All filing dates have been met;
  - b) That the protest contains the required information as identified in this procedure; and
  - c) That 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 Contracts Manager.
2. If the procurement that is being protested is federally funded, notify either:
  - a) The Federal Transit Administration, or
  - b) Caltrans.
3. Determine a fair review process 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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**XI. 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