



# 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. In the event of an adverse decision, a protestor may file a request for reconsideration or file a protest with the Department of Transportation, Federal Transit Administration. Any protest filed with the FTA must :
  - 1. Be filed pursuant to FTA guidelines if the procurement involved FTA funding; and
  - 2. The protest is limited to complaints based on an alleged failure by the District to follow its bid protest procedures. Details regarding the procedure for filing with the FTA are set forth at Section VI. D.
- H. 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	1. Protests and requests for consideration shall be filed with:  <div style="text-align: center;">           Chief Financial Officer            NICTD            33 East U.S. Highway 12            Chesterton, IN 46304-3514         </div> and shall include:  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.

The availability of review of bid protests by FTA is described in Subsection D, below. The FTA's revised procurement guidelines the role of the Federal government in bid protest review as limited.

### D. FTA Bid Protest Procedure

The FTA has substantially limited its review of bid protests recognizing that most protest issues are best resolved at the State and Local level. FTA will now only accept protests alleging that:

1. The District failed to have written protest procedures; or,
2. The District ~~did not~~ follow its own protest procedures.

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If a protest is brought before FTA on either of these allegations, the only remedy recognized by FTA is to require the District to follow its own protest procedures. FTA does not have the right to change the District's substantive decision by substituting FTA's judgement for that of the District.

Any protest to FTA must be filed in accordance with the FTA's requirements contained in FTA Circular 4220.1F and may only be made by an "interested party." FTA has defined an "interested party" as "an actual or prospective bidder or offerer whose direct economic interest would be affected by the award of the contract or by failure to award contract."

No protest may be filed with the FTA later than five (5) days after a final decision under the District's procedure. As used in the preceding sentence, "filed" refers to the date of receipt by FTA and "days" refers to working days of the Federal Government. The address for filing a complaint with FTA is:

Regional Administrator  
Federal Transit Administration  
200 West Adams Street, Suite 2410  
Chicago, IL 60606

Any alleged violation of a specified Federal requirement that provides an alternate applicable complaint procedure shall be submitted and processed in accordance with the applicable Federal regulation or law instead of the requirements of FTA Circular 4220.1F. See e.g. Buy America Requirements, 49 CFR, Part 661; Participation of Minority Business Enterprises in Department of Transportation Program, 49 CFR Section 23.

## 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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