



EXHIBIT NO. 4
PROTEST PROCEDURES FOR DESIGN-BUILD PROJECTS

I. PURPOSE

In accordance with FTA requirements, including FTA Circular 4220.1F, NICTD has adopted this Protest Procedure for Design-Build Projects to govern any and all protests relating to any NICTD action or decision made in conjunction with or relating to the Design-Build Procurement of a Design-Build Contract for performance of the Work on the West Lake Corridor Rail Project (“Rail Project”), including the Request for Qualifications (“RFQ”) phase and the Request for Proposals (“RFP”) phase of that procurement.

Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFQ, and Glossary of Definitions attached as Exhibit No. 1 thereto.

A. Exclusive Remedy

This Design-Build Procedure sets forth the exclusive protest remedies available with respect to the Procurement of the Rail Project, including:

1. allegations that the terms of the RFQ and/or RFP are ambiguous, contrary to legal requirements applicable to the procurement, or exceed NICTD’s authority;
2. a determination as to whether a Statement of Qualifications (“SOQ”) and/or Proposal is responsive to the requirements of the RFQ and/or RFP or as to whether an SOQ and/or Proposal passes the pass/fail criteria set forth in the RFQ and/or RFP;
3. short-listing determinations by NICTD and/or the Technical Review Committee (“TRC”); and/or
4. determination of a Selected Proposer by NICTD or the TRC.

B. Definitions

A “Protest” shall mean and include any challenge to or relief sought from a NICTD action or decision made in conjunction with or relating to the Procurement that is submitted by an Interested Party under this Protest Procedure, including, but not limited to, requests for relief from a mistake or error. A Protest is an Interested Party’s remedy for addressing perceived wrongs in the procurement process.

A “Protestor” shall mean any Interested Party that has submitted a protest to the District.

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An “Interested Party” shall have the same meaning as set forth in FTA C 4220.1F(b)((1)(a) and in the NICTD Protest Procedure include a party that is an actual or prospective Proposer who has a direct economic interest in the Procurement, including the RFQ and/or the RFP. Subcontractors and subconsultants do not qualify as an “Interested Party”.

“File or Submit” shall mean the delivery of a document to the NICTD Procurement Contact for notification, consideration, and/or action with an effective date defined as the date shown on the date stamp receipt affixed by the NICTD administrative personnel.

II. POLICY AND PROCEDURE

A. Required Early Communication for Certain Protests.

1. With respect to a Proposer Protest concerning the issues described in this Section 1(A)(1), such a Protest may be filed only after Proposer has informally discussed the nature and basis of the Protest with NICTD, following the procedures prescribed in this Section II(A).
2. Informal discussions shall be initiated by a written request for a one-on-one meeting delivered to the NICTD Procurement Contact at the address specified in Section 3.5 of the RFQ.
3. The written request shall include an agenda for the proposed one-on-one meeting. NICTD shall meet with the Proposer as soon as practicable to discuss the nature of the allegations.
4. If necessary to address the issues raised in a Protest, NICTD may, in its sole discretion, make appropriate revisions to the RFQ or RFP Procurement documents by issuing addenda.

B. Deadlines for Protests.

1. Protests concerning the issues described in Section I(A)(1) must be filed as soon as the basis for the protest is known, but no later than twenty (20) calendar days prior to the SOQ Due Date (for issues regarding the RFQ), or no later than the twenty (20) days prior to the Proposal Due Date (for issues regarding the RFP), unless the Protest relates to an addendum to the RFQ and/or RFP, in which case the Protest must be filed no later than five (5) business days after the applicable addendum is issued.
2. Protests concerning the issues described in Section I(A)(2) must be filed no later than five (5) business days after receipt of (i) the applicable notification of non-responsiveness, or (ii) the applicable notification that an SOQ and/or Proposal has failed any of the pass/fail criteria set forth in the RFQ and/or RFP.
3. Protests concerning the issues described in Section I(A)(3) must be filed no later than ten (10) calendar days after the earliest of the notification of the Short-List and the public announcement of the Short-List at the end of the RFQ phase.

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4. Protests concerning the issues described in Section I(A)(4) in connection with the RFP, must be filed no later than ten (10) calendar days after the announcement by the TRC of its recommendation for the Selected Proposer for execution of the Design-Build Contract.
5. Protests submitted past the deadlines set forth in this Section II(B) shall be deemed to be waived, and the Protestor shall be deemed to have waived all further rights to protest.
6. In computing any period of time prescribed by the Protest Procedures, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included. Any document or notice received after the close of regular business hours (8:00 a.m. to 5:00 p.m. CST) shall be deemed received the following Business Day.
7. Any Protest based on the form or content of the Procurement Documents, which is or should have been apparent prior to the date established for submittal of the SOQ or Proposal, as applicable, will not be considered where the Protestor had the opportunity to address its concerns through the submission of questions and requests for clarifications process allowed in the Procurement.
8. In no event will a Protest be considered if all SOQs or all Proposals are rejected or if the Protest is received after award of the Design-Build Contract.

C. Content of Protest.

1. Protests shall be in writing. No oral objections shall be considered.
2. Protests shall completely and succinctly state the grounds for protest, its legal basis, and its factual basis, and shall include
 - a) The name, street address, email address and phone number of the Protestor;
 - b) The name of the Project, the RFQ and/or the RFP and the Procurement number for which the Protest is submitted;
 - c) A detailed statement of the specific factual and legal grounds for the Protest and any supporting legal and/or factual documentation, including Procurement Document references if applicable, to establish the merits of the Protest;
 - d) A brief statement of the relief requested; and
 - e) Shall be sworn and submitted under penalty of perjury.
3. 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.
4. If the Protestor believes that the protest contains proprietary material which should be withheld, a statement advising of this fact, and the reason therefor, must be affixed to the

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front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

D. Filing of Protest.

1. Protests shall be filed by hand delivery on or before the applicable deadline to the NICTD Procurement Contact designated in Section 3.5 of the RFQ with a copy to the NICTD CEO at 33 E. US Highway 12, Chesterton IN 46304.
2. For any protests filed after the SOQ with respect the RFQ phase, and/or Proposal Due Date with respect to the RFP phase, the Protestor filing the protest shall concurrently send a copy of the protest to the other Proposers whose addresses may be obtained by contacting the NICTD Procurement Contact.

E. Comments from Other Proposers.

With respect to Protests filed pursuant to Section D(2), other Proposers may file statements in support of or in opposition to the protest within seven (7) calendar days of receiving notice of the filing of the protest. NICTD will promptly forward copies of all such statements to the Protestor who filed such protest. Any statements shall be sworn and submitted under penalty of perjury.

F. Burden of Proof.

The Protestor shall have the burden of proving its Protest by clear and convincing evidence. NICTD may, in its sole discretion, discuss the protest with the Protestor and other Proposers. No hearing will be held on the Protest. The Protest shall be decided on the basis of written submissions only.

G. Decision on the Protest.

1. If NICTD determines that a Protest submission is timely, complete and meritorious, the Protestor's relief shall be limited to the NICTD decision and recommended course of action. The Protestor shall not be entitled to any monetary relief, including, but not limited to, any expectancy damages and bid and/or proposal preparation costs.
2. NICTD shall issue a written decision regarding the Protest within thirty (30) calendar days after the filing of the detailed statement of Protest. If necessary to address the issues raised in a Protest, NICTD may, in its sole discretion, make appropriate revisions to the RFQ or RFP by issuing an addendum.
3. Any written decision of NICTD that is not within the permitted scope of FTA review as provided in FTA Circular 4220.1F shall be final and non-appealable.

H. Appeal of NICTD's Decision

1. If the decision regarding the Protest rendered by NICTD is deemed to be adverse by the Protestor, the Protestor may file an appeal with the FTA to the extent permitted, and in accordance with, the FTA requirements contained in FTA Circular 4220.1F. Protester must provide NICTD with a copy of any appeal filed with FTA on the same day of such filing. The copy of the appeal shall be delivered to the NICTD Procurement Contact, with a copy delivered to the NICTD CEO at 33 E. US Highway 12, Chesterton IN 46304.
2. The FTA review on appeal shall be limited to: (1) the alleged failure of NICTD to have or follow a written protest procedure; or (2) a violation of federal law or regulation.
3. No protest may be filed with the FTA later than five (5) days after a final decision by NICTD under the Protest 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.
4. A Protestor must exhaust all remedies with NICTD as provided herein before pursuing an appeal with the FTA.

I. Protestor's Payment of NICTD's Costs.

If a Protest is denied, the Protestor shall be liable for NICTD's costs reasonably incurred to defend against or resolve the Protest and any subsequent appeal to the FTA, including legal and consultant fees and costs, and any unavoidable damages sustained by NICTD as a consequence of the Protest.

J. Rights and Obligations of Proposers.

Each Proposer, by submitting its SOQ, acknowledges that it has reviewed and acquainted itself with the Protest Procedure herein, agrees to be bound by such Protest Procedure as a condition of submitting an SOQ and/or Proposal and expressly recognizes and agrees to the limitation on its rights to protest provided in this Protest Procedure, and expressly waives all other rights and remedies that may be available to Proposer under law. The Protestor shall not be entitled to any monetary relief, including, but not limited to, any expectancy damages and bid and/or proposal preparation costs.

END OF DOCUMENT

