



## **Protest Procedures for Competitive Grant Programs**

SANDAG shall use the following procedures to respond fairly and promptly to any protest received regarding competitive grant programs administered by SANDAG. SANDAG will only review a protest submitted by an actual or, in the case of a protest before the application due date related to the content of the solicitation (also referred to as a “call for projects”), a prospective applicant.

SANDAG will consider all protests or objections regarding the solicitation process or the award of a grant received by SANDAG by 5:00 p.m. Pacific Time on the deadlines discussed below. The date of the protest filing shall be the date SANDAG electronically or physically receives the written protest. A protest that does not strictly comply with these protest procedures will be rejected.

SANDAG shall not be liable for any damages to the entity filing the protest or any participant in the protest on any basis, express or implied.

### **I. SUBJECT OF PROTEST**

#### **A. Protest Related to the Content of the Solicitation**

A protest relating to the content of the solicitation, including any protest based on the eligibility or evaluation criteria, must be filed in writing within seven calendar days after the date SANDAG issues the solicitation or addendum with the revised content. Failure to file a protest concerning the content of the solicitation or addendum with the revised content before this deadline constitutes a waiver of any protest on these grounds.

#### **B. Protests Related to Determinations by SANDAG of Eligibility, Responsiveness, or Responsibility**

If, after evaluating all applications, an applicant is determined to be ineligible or nonresponsive, or an application is determined to be nonresponsive, a protest relating to any such determination must be filed in writing within seven calendar days of receipt of the notice of ineligibility, nonresponsiveness, or nonresponsibility from SANDAG. Failure to file a protest concerning a determination of ineligibility, nonresponsiveness, or nonresponsibility before this deadline constitutes a waiver of any protest on these grounds by the applicant.

In the case of a protest relating to a finding of applicant nonresponsibility, such applicant shall be entitled to present in its protest evidence rebutting the adverse evidence presented in the Notice of Nonresponsibility as well as present evidence demonstrating its qualifications to perform the grant requirements. The protestor’s evidence shall be presented solely in writing unless the applicant affirmatively requests an administrative hearing on the issue of responsibility in its timely submitted protest materials. If an applicant requests an administrative hearing, all requirements of the initial protest materials as set forth below must be met, including the timely submission of all relevant evidence. The applicant will thereafter be afforded an administrative hearing before the protest decision.

### **C. Protests Related to the Notice of Intent to Award**

After evaluating and ranking all applications, a Notice of Intent to Award will be emailed to all eligible, responsive, and responsible applicants. A protest relating to the Notice of Intent to Award must be filed in writing within seven calendar days of the Notice of Intent to Award issue date. An untimely protest will be rejected as such. SANDAG reserves the right to reject a protest that covers an issue on which SANDAG has already issued a final decision.

If the protestor makes allegations regarding the eligibility, responsiveness, or responsibility of another applicant, the protestor shall concurrently email or mail with overnight delivery a copy of the protest to any applicant(s) who are the subject of the protest. A protestor may obtain the contact information for other applicants from the SANDAG Grant Protest Administrator. The affected applicant(s) may deliver a statement in support of or in opposition to the protest within five calendar days of receipt of the protest. Any such statement must be emailed to the SANDAG Grant Protest Administrator or physically delivered to SANDAG during its normal business hours with proof of delivery. SANDAG will promptly forward copies of any such statements to the protestor.

## **II. PROTEST CONTENT REQUIREMENTS**

A letter of protest must set forth detailed grounds for the protest and be fully supported with technical data, documentary evidence, names of witnesses, and other pertinent information related to the subject being protested. The protest also must state the law, rule, regulation, or policy upon which the protest is based. The protestor must allege or establish a clear violation of a specific law, rule, regulation, or policy that applies to SANDAG. All materials submitted in a protest shall be considered a public record unless disclosure is prohibited by law or regulation.

Any protest and related statements must be emailed to the SANDAG Grant Protest Administrator or physically delivered to SANDAG during its normal business hours with proof of delivery.

When another applicant's application is the subject of the protest, documentation supporting the protest must be delivered to the affected applicant(s) by email or overnight delivery, with proof of delivery provided to SANDAG no later than two calendar days after submission of the protest to SANDAG. Failure to notify an applicant when its application is the subject of the protest shall result in the immediate rejection of the protest without further consideration by SANDAG. An applicant whose application is the subject of the protest may submit to SANDAG materials in response to the protest within five calendar days of its receipt of the protest. Such materials shall be emailed or physically delivered overnight to the SANDAG Grant Protest Administrator. A copy of the materials must also be emailed or physically delivered overnight to the protestor.

Protests shall be addressed to:

SANDAG Grant Protest Administrator  
San Diego Association of Governments  
401 B Street, Suite 800  
San Diego, CA 92101  
grantprotest@sandag.org

Communications to SANDAG concerning the protest by the protestor or an adversely affected applicant must only be directed through the SANDAG Grant Protest Administrator or their designee. Violation of this prohibition on all other communications may result in an automatic finding of the protest to be invalid. Any protest determined to be incomplete will be rejected.

### **III. INITIAL PROTEST REVIEW**

The SANDAG Grant Protest Administrator shall review a protest to determine if it follows this Section's deadline, format, content, and notice requirements. A protest may be rejected without further consideration if it does not meet such requirements. Notice of such rejection shall be sent to the protestor. If a protest meets the deadline, format, content, and notice requirements, it will undergo the following resolution process.

### **IV. RECOMMENDED PROTEST RESOLUTION**

#### **A. Protests Requiring Factual Determinations**

The SANDAG Grant Protest Administrator will review a qualifying protest promptly. The SANDAG Grant Protest Administrator will gather the documents relevant to the protest and may interview the protestor or adversely affected applicant(s) if deemed necessary to complete its investigation. All materials included with the original protest at the time of submittal will be considered, along with other documents relevant to the solicitation as determined by the SANDAG Grant Protest Administrator. Supplemental materials filed by a protestor after the protest deadline will not be considered unless there are extenuating circumstances in the opinion of the SANDAG Grants Protest Administrator. Documents submitted by a protestor or other interested party will be considered a public record unless disclosure is prohibited by law or regulation. Once the investigation is complete, the SANDAG Grant Protest Administrator will provide a written recommendation regarding the protest to the Chief Financial Officer (CFO) or designee within fourteen calendar days of the date of receipt of the protest.

#### **B. Protests Not Requiring Factual Determinations**

When the resolution of a protest does not require the determination of questions of fact but instead only requires the determination of questions of law, the SANDAG Office of General Counsel shall prepare a written recommendation regarding the protest to the CFO or designee within fourteen calendar days of the date of receipt of the protest.

#### **C. Requests for Administrative Hearing**

For a protest regarding nonresponsibility where the protestor has properly requested an administrative hearing as set forth above, the CFO or designee shall act as the hearing officer. The CFO shall consider the evidence submitted and testimony presented at the hearing in rendering the decision.

### **V. PROTEST DECISION**

After receipt of the protest recommendation, the CFO or designee will either sustain or reject the protest in writing. The CFO or designee will render a decision that is in the best interest of SANDAG. The protest decision will be communicated in writing by the Grant Protest

Administrator to the protestor and/or the applicant whose application is the subject of the protest.

## **VI. REQUEST FOR PROTEST RECONSIDERATION**

Upon receipt of the CFO or designee's decision from the SANDAG Grant Protest Administrator, the protestor or any party whose application is the subject of the protest may file a request for protest reconsideration. The scope of reconsideration shall be whether the protest determination was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The request for reconsideration must identify with specificity how the protest decision was arbitrary, capricious, an abuse of discretion, or contrary to law. Any request for reconsideration that fails to state a valid basis for reconsideration is untimely, is based on a repetition of arguments previously raised, or expresses disagreement with the protest decision will be rejected. No administrative hearing will be permitted, and no new evidence will be considered during the reconsideration process.

A request for protest reconsideration must be directed to the SANDAG Grant Protest Administrator in writing, fulfill the format, content, and notice requirements outlined in this Section, and be received within seven calendar days from the date the protestor or adversely affected applicant receives the protest decision from SANDAG.

An applicant whose application is the subject of a request for protest reconsideration shall have the right to respond to the request by submitting a written response to the SANDAG Grant Protest Administrator within three calendar days of receiving the request for reconsideration. The applicant shall submit its response to the SANDAG Grant Protest Administrator by email or overnight delivery. The applicant shall provide a copy of their response to the protesting party by email or overnight delivery at the time of submitting their response to SANDAG.

The Chief Executive Officer (CEO) or designee will review the request for reconsideration materials, and either affirm or deny the protest decision within fourteen calendar days from the date SANDAG receives the request. The decision of the CEO or designee will be communicated in writing by the SANDAG Grant Protest Administrator to the protestor, and any applicant whose application is the subject of the protest. The decision of the CEO or designee will be final.

## **VII. RESUMING THE SOLICITATION**

If a protest relating to a potential grant award is sustained, the original Notice of Intent to Award may be withdrawn after the deadline for protest reconsideration has passed. SANDAG then may issue a new Notice of Intent to Award to one or more different applicants. A new protest period will then commence and the requirements of these procedures will be followed.

If the protest is rejected, the original Notice of Intent to Award will stand.

## **VIII. PROTEST ON PROCUREMENTS WITH FEDERAL FUNDING**

Pursuant to federal agency guidance, SANDAG is responsible for settling all contractual and administrative issues arising out of its contracting processes. These issues include but are not limited to, source evaluation, protests, disputes, and claims.

Regarding contracts with grant awards that will use federal funds, protests may be reviewed by the federal agency providing funds only when the issue is a compelling federal concern. If the federal awarding agency grants review, the federal awarding agency will not substitute its judgment for that of SANDAG unless the matter is primarily a federal concern. Violations of law should be referred to the local, state, or federal authority having proper jurisdiction. See, 2 CFR 200.318(k). Alleged violations of a specific federal requirement that provides an applicable complaint procedure must be submitted and processed under that federal regulation. For example, see the Buy America Requirements at 49 CFR 661.15 and requirements for Participation by Minority Business Enterprise in DOT Programs at 49 CFR 23.73.

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