

Appendix B
Protest Procedures

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Staff shall post Management Policy P-13 on the RTC website and shall ensure that every solicitation that is required to be advertised/publicized includes the following provision:

Protest Procedures. RTC's policy and procedures for the administrative resolution of protests are set forth in RTC's Management Policy P-13, which is available on the RTC website. RTC will furnish a copy of Management Policy P-13 upon request.

A. Scope.

These protest procedures apply to solicitations that are advertised or publicized through Formal Bidding Procedures (IFB), Competitive Proposal Procedures (RFP), or Qualifications-Based Procurement Procedures. These protest procedures are the exclusive means to protest RTC procurement actions.

B. Standing.

To file a protest, the protester must be an actual or prospective supplier of the goods or services whose direct economic interest would be affected by the award of, or failure to award, a contract.

C. Grounds.

Protesters may only protest RTC procurement actions based on an allegation that:

1. RTC failed to comply with state or federal law;
2. RTC failed to comply with its procurement policies; OR
3. RTC failed to comply with the terms of its solicitation document.

D. Costs.

By filing a protest, the protester agrees that RTC will not be responsible for any costs associated with the protest, including any attorney fees, and that the protester shall not be entitled to reimbursement from RTC regardless of the outcome.

E. Filing.

Protests must be in writing and filed with RTC by physical delivery to 1105 Terminal Way, Suite 300, Reno, Nevada 89502. The envelope or package should be addressed to "Attn: Procurement Manager."

F. Contents.

Protests should be concise, logically arranged, clear, and legible and must contain the following:

1. Name, address, and telephone number of the protester and a contact person;
2. Date, title, and identification number of the solicitation;
3. A written statement setting forth with specificity the grounds for the protest and supporting evidence. If the protester later raises new grounds or provides new evidence that reasonably could have been raised or provided earlier, RTC will not consider such new grounds or evidence in the determination of the protest;

4. A written statement setting forth with specificity the reasons the protester believes the applicable provisions of law, if any, were violated;
5. The action or relief desired from RTC; AND
6. In the case of solicitations through an IFB or RFP, a protest bond issued by a good and solvent surety authorized to do business in Nevada, in an amount equal to the lesser of:
 - a. 25% of the total value of the bid or proposal submitted by the person filing the protest; OR
 - b. \$250,000.

G. Timing and Deadlines

1. Pre-bid/pre-proposal Protests.
 - a. Protests against RTC actions during the solicitation phase must be filed at least five business days prior to the bid opening or proposal due date.
 - b. The Procurement Manager shall make a determination on the merits of the protest prior to opening bids or evaluating proposals.
 - c. The Procurement Manager shall provide the determination to all bidders/proposers prior to opening bids or evaluating proposals.
2. Pre-award Protests.
 - a. Staff shall provide notice of its intent to recommend award of the contract to all bidders/proposers at least seven business days prior to award.
 - b. Protests against the intended award of a contract must be filed within five business days after RTC provides notice of its intent to recommend award.
 - c. A pre-award protest cannot be on grounds which were known, or with due diligence should have been known, by the protester at the pre-bid/proposal protest deadline.
 - d. RTC will not award the contract until the Procurement Manager makes a determination on the merits of the protest and presents that determination to the Board or the Executive Director, as applicable, prior to award; provided, however, that RTC reserves the right to proceed with an award to avoid undue delay or harm to RTC or if it is otherwise in the best interest of RTC as determined by the Executive Director.

- e. The Procurement Manager shall provide the final determination to all bidders/proposers at the time of, or prior to, the award if possible.
3. Post-award Protests.
 - a. Post-award protests must be filed within three business days after award of the contract.
 - b. A post-award protest cannot be on grounds which were known, or, with due diligence should have been known, by the protester at the pre-award protest deadline.
 - c. RTC reserves the right to proceed with the execution or performance of the contract to avoid undue delay or harm to RTC or if it is otherwise in the best interest of RTC as determined by the Executive Director.
 - d. The Procurement Manager shall make a determination on the merits of the protest and present that determination to the Executive Director.
 - e. The Procurement Manager shall provide a final determination to all bidders/proposers stating the action taken on the protest, and the reason for the action. The notice shall be provided within five business days of receipt of a post-award protest, if possible.

H. Review and Determination.

1. Upon receipt of a protest, staff will notify the protester that the protest is being reviewed. For FTA funded contracts, the Procurement Manager will notify FTA Region IX, and will keep FTA informed about the status of the protest. For FHWA funded contracts, the Procurement Manager will notify NDOT, and will keep NDOT informed about the status of the protest.
2. The Procurement Manager shall investigate the merits of the protest.
 - a. In its sole discretion, RTC may request additional information from the protester.
 - b. In its sole discretion, RTC may request additional information from other bidders/proposers, and may allow other bidders/proposers to submit comments regarding the merits of the protest.
 - c. In its sole discretion, RTC may schedule an informal conference with all bidders/proposers to discuss the merits of the protest.

- d. In its sole discretion, RTC may summarily dismiss all or any portion of a protest that raises legal or factual arguments or allegations that have been previously considered and resolved by RTC in a previous protest.
3. The Procurement Manager's determination on the merits of the protest must be in writing and contain four parts:
 - a. Summary – Describes the protester, the solicitation, the issues raised, and the determination.
 - b. Background – Describes in more detail the history of the solicitation, the events leading to the protest, the date the protest was received, and the evaluation process.
 - c. Discussion – Identifies the issues raised, the factors considered in reaching the determination, and the rationale for the determination.
 - d. Determination – States the determination and any remedy or subsequent action resulting from the determination, e.g., award, cancellation of the procurement, etc.

I. FTA Involvement.

For FTA funded contracts, the protester may raise matters that are primarily a Federal concern with the FTA. Matters involving the award of a contract must be raised with FTA within five business days of receipt of RTC's determination on the merits of the protest.

J. Confidentiality.

Materials submitted by a protester will not be withheld from any interested party outside of RTC or from any governmental entity which may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. If the protester believes that a protest contains proprietary materials which should be withheld, a statement advising of this fact must be affixed to the front page of the protest and the alleged proprietary information must be so identified wherever it appears. If a protester requests that RTC withhold from disclosure information identified as confidential, and RTC complies with the protester's request, the protester assumes all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless RTC from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the protester information), and pay any and all costs and expenses related to the withholding of the protester's information. The protester shall not make a claim, sue, or maintain any legal action against RTC or its directors, officers, employees, or agents concerning the withholding from disclosure of protester's information.

K. Records.

1. Upon receipt of a protest, the Procurement Manager shall establish a separate file in which reasonable and adequate documentation of the protest and outcome shall be maintained.
2. The file should, at a minimum, include the following:
 - a. Notice of intent to award;
 - b. The protest;
 - c. Notices to FTA or NDOT, if required;
 - d. Record of timeliness of actions;
 - e. Record of internal or external review of the protest;
 - f. Record of legal review of the protest, if any;
 - g. The Procurement Manager's determination on the merits of the protest;
AND
 - h. Any notices or correspondence provided in connection with the protest.