

Nebraska Department of Transportation

Procurement Policy

NOTICE

This guidance document is advisory in nature but is binding on the Nebraska Department of Transportation until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department of Transportation and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. See Neb. Rev. Stat. § 84-901.03

Policy No: 25-23-07
Application: Goods & Services
Subject: Protest Policy
Effective Date: 07-01-2025

I. DEFINITIONS

- A. **Awardee** -The Bidder who is identified in the Intent to Award as the prospective recipient of the contract.
- B. **Bid** -A Bidder's response to a published solicitation.
- C. **Bidder** - A Vendor who properly submitted a Bid by the Solicitation's deadline.
- D. **Debrief** - Feedback on the Bidder's proposal produced at that Bidder's request.
- E. **Intent to Award** – The document posted on NDOT's website that designates the Bidder(s) to which the State intends to award the contract.
- F. **NDOT** – An abbreviation for the State of Nebraska Department of Transportation.
- G. **Notice of Appeal** -A formal pleading meeting the requirements of the policy that an Awardee or Protestor who was dissatisfied with the decision of the Procurement Manager or designee submits to the Director of NDOT.
- F. **Procurement Manual** - The NDOT Procurement Manual.
- G. **Protest** –A formal pleading by an eligible Vendor or Bidder that conforms to the requirements set forth within this policy and is submitted within the time limits contained herein.
- H. **Protestor** -A Vendor who submits a Protest under this policy.
- I. **Protest Period** -The time during which a Protest may be filed or during which a Protest is pending.
- L. **Solicitation** - The documents posted on NDOT's website to procure specific goods or services by soliciting Bids from Vendors.
- M. **Vendor** - A bona fide business that provides the goods or services requested by the Solicitation.

II. APPLICABILITY

This policy is applicable to NDOT's bidding process for **goods and services only**. This policy does not apply to NDOT construction, consultant or other bidding processes, awards, contracts, etc., outside of the scope of NDOT goods and services procurement. This protest policy replaces and supersedes all previously published protest policies.

III. PROTEST ELIGIBILITY

- A. A Vendor may protest the specifications of a Solicitation.
- B. A Bidder may protest the Intent to Award to another Bidder.
- C. Any Bidder who executed a contract with the State of Nebraska as a result of an Intent to Award is not eligible to protest another Intent to Award stemming from the same solicitation.

IV. PROTEST GROUNDS

- A. A Protest of the specifications of the Solicitation may only be on the following grounds:
 - 1. The specifications are restrictive such that only one Vendor is eligible to submit a Bid; or
 - 2. The specifications are so vague that the State would not be able to fairly evaluate Bids.
- B. A Protest of the Intent to Award may only be on the following grounds:
 - 1. A violation of applicable Nebraska law or federal law;
 - 2. A failure to comply with the NDOT Procurement Manual;
 - 3. Mathematical or clerical error that resulted in an erroneous contract award;
 - 4. An actual conflict of interest;
 - 5. Collusion between two or more Bidders or between a Bidder and a Vendor; or
 - 6. Failure of the/an Awardee to meet mandatory minimum requirements.

V. PROTEST PROCEDURE

A. Time to File

- 1. A Protest of the specifications must be submitted within ten (10) business days after the Solicitation has been published on NDOT's website.
- 2. A Protest of the Intent to Award must be submitted within ten (10) business days after the Intent to Award has been published on NDOT's website.
- 3. A Protest of a withdrawn Intent to Award must be submitted within ten (10) business days after notice of withdrawal is published on NDOT's website. A protest of a withdrawn Intent to Award is only available where in the same solicitation at least one other Intent to Award was simultaneously issued but not withdrawn.

- B. **Submission:** The Protest must be submitted electronically to NDOT.ProcurementServices@nebraska.gov and must at a minimum contain:

- 1. The Solicitation number of the protested Solicitation;

2. The legal name of the Protester;
3. The point of contact for the Protester;
4. The ground(s) for the protest in accordance with Section IV; and
5. A request for a meeting before NDOT's Procurement Manager, if so desired.

C. NDOT Procurement Manager Review of Purchasing Award

1. NDOT's Procurement Manager or Designee shall issue a decision on each Protest within five (5) business days after his or her meeting with the Protester or within ten (10) business days after the Protest's submission to NDOT's Procurement Manager, whichever is later. If NDOT's Procurement Manager or Designee determines that the issues involved in the Protest are too complex for a determination to be made within the above timeline, NDOT's Procurement Manager or Designee may extend this deadline by a period not to exceed thirty (30) business days.
2. The Protestor, the Awardee, and NDOT may submit evidence in support of their various positions.
3. The record before NDOT's Procurement Manager shall be closed five (5) business days after the submission of the Protest or at the conclusion of the meeting with NDOT's Procurement Manager, whichever is later.
4. In evaluating the Protest, NDOT's Procurement Manager may consider all information NDOT's Procurement Manager deems relevant, and NDOT's Procurement Manager's review shall be de novo.
5. Protesters have the burden to prove the allegations in their Protest by a preponderance of the evidence.
6. Meeting with NDOT Procurement Manager:
 - i. If the Protest requests a meeting with NDOT's Procurement Manager, the Procurement Contracts Officer shall schedule the requested meeting within ten (10) business days of receiving the Protest.
 - ii. The meeting will allow the Awardee, the Protesting Bidder, and the Procurement Contracts Officer to present evidence and argument in support of their respective positions.
 - iii. Unless directed otherwise by NDOT's Procurement Manager, the Awardee and Procurement Contracts Officer are not required to attend the meeting.
7. If NDOT's Procurement Manager sustains the Protest, he or she may assign an appropriate remedy, including the following:
 - i. Rebidding the Solicitation;
 - ii. Awarding the contract to another Bidder;
 - iii. Settling the matter with the Protesting Bidder and the Awardee, which settlement shall not include any exchange of money; and
 - iv. Any other remedy NDOT's Procurement Manager deems fair under the circumstances.
8. NDOT's Procurement Manager may appoint a Designee to review

any Protest on his or her behalf. Any Designee must meet the following requirements:

- i. The Designee must be qualified and not otherwise involved in the procurement that is being protested.

D. Appeal to Director of NDOT

1. If the Awardee or the Protesting Bidder is dissatisfied with NDOT's Procurement Manager's decision, the dissatisfied party may Appeal the decision to the Director of the Nebraska Department of Transportation (the "NDOT Director").
2. Notice of Appeal:
 - i. The dissatisfied party must electronically submit Notice of Appeal to the NDOT Director at NDOT.ProcurementServices@nebraska.gov within ten (10) business days after the issuance of NDOT's Procurement Manager's decision.
 - ii. The Notice of Appeal must assign specific error to NDOT's Procurement Manager's decision and argue all errors assigned.
 - iii. A dissatisfied party may only raise issues in their Notice of Appeal that were considered before NDOT's Procurement Manager.
3. The NDOT Director or Designee shall issue his or her decision on the Appeal within ten (10) business days after the submission of an Appeal or within five (5) business days after his or her meeting with the parties, whichever is later. If the NDOT Director or Designee determines that the issues involved in the Appeal are too complex for a determination to be made within the above timeline, the NDOT Director or Designee may extend this deadline by a period not to exceed thirty (30) business days.
4. The NDOT Director or Designee shall review the Protest de novo on the record created before NDOT's Procurement Manager.
5. The dissatisfied party has the burden to show NDOT's Procurement Manager erred by a preponderance of the evidence submitted to NDOT's Procurement Manager.
6. Meeting with the NDOT Director:
 - i. If the dissatisfied party requests a meeting in their Notice of Appeal, the NDOT Director or Designee shall hold a meeting with the dissatisfied party within ten (10) business days of receiving a valid written appeal.
 - ii. The meeting will allow the Awardee, the Protester, and the NDOT's Procurement Manager an opportunity to present and respond to arguments on Appeal.
 - iii. Unless directed otherwise by the NDOT Director, no party aside from the dissatisfied party is required to attend the meeting on Appeal.
7. An Appeal is not available if the Solicitation has been withdrawn or will be rebid or, in the opinion of NDOT's Procurement Manager, the defect(s) have been cured.
8. The NDOT Director may affirm the decision of NDOT's

Procurement Manager, reverse the decision of NDOT's Procurement Manager, or provide any alternative remedy that NDOT's Procurement Manager may provide under this policy.

9. The NDOT Director may appoint a Designee to review any Appeal on his or her behalf.
 - i. When appropriate, the Designee must in the Director's opinion be qualified, the Designee must not be the same person who issued the initial decision on the Protest and the Designee must not have been involved in the initial procurement.
 - ii. When the protest is likely to be complex, difficult or litigious, the Director shall choose a Designee who, in the Director's opinion is qualified, and who is not an employee of NDOT to review the Appeal.

VI. CONTRACT EXECUTION DURING PROTEST

A contract that is subject to this policy may be negotiated but shall not be executed until the Protest Period has concluded, except with the approval of the NDOT Director or designee.

VII. NO CONTESTED CASE

This Protest Policy does not create a contested case under Neb. Rev. Stat. § 84-901 (3).

VIII. DEBRIEFS

- A. A Bidder may request a Debrief with NDOT Procurement.
- B. A Bidder must request a Debrief within sixty (60) calendar days after the Intent to Award has been posted to NDOT's website.
- C. No Debrief shall occur until after the Protest Period has passed.
- D. If a Debrief is requested, NDOT's Procurement Manager shall either:
 1. Prepare a written explanation as to why the Bidder did not receive the award; or
 2. Meet with the Bidder to discuss the Solicitation.
- E. NDOT's Procurement Manager's explanation or meeting must occur within thirty (30) calendar days after the contract is executed or thirty (30) calendar days after the request for Debrief was submitted, whichever is later.
- F. No provision of the foregoing section requires NDOT to disclose any information that the State is not otherwise obligated to disclose, and this section does not waive any rights, privileges, or immunities of NDOT.

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[SIGNATURE PAGE TO FOLLOW.]

The foregoing policy is duly signed and executed on this 9th day of June 2025.



Procurement Manager,
Nebraska Department of Transportation

6/5/25
DATE



Deputy Director of Operations,
Nebraska Department of Transportation

6/9/25
DATE