MEMORANDUM

TO:         Airport Board
FROM:       Patrick Dame, C.M., Executive Director
DATE:       December 21, 2021
RE:         Adopt Bid Protest Procedure

We received notification from the SD DOT that we are required to have a Bid Protest Procedure by the FAA to handle any protest. They requested we get the procedure in place prior to our next bid letting so the information can be included in bid documents going forward. Attached is the Bid Protest Procedure that we will follow.

STAFF RECOMMENDATION: Staff recommends approval of the Bid Protest Procedure.
Bid Protest Procedures

1. Any bidder may protest the award of a contract. The protest must be submitted in writing to the Engineer responsible for the contract or solicitation within five calendar days after the bids are read.

2. If a contract has been awarded, the Engineer shall give notice of such protest within 24 hours to the awarded contractor. In the case of a pending award, a stay of award may be requested. A stay may be granted unless a written determination is made that the award of the contract without delay is necessary to protect the interests of the Owner.

3. The protest must contain the following:
   - Name, address, phone number and email of the protestor.
   - A concise statement of all the material facts alleged and of all of the rules, regulations, statutes, and legal provisions entitling the protestor relief.
   - A statement indicating the relief to which the protestor deems they are entitled.
   - All other information as the protestor deems to be material to the issue.

4. If the protest cannot be resolved by mutual agreement within seven calendar days after receipt, the Engineer responsible for the contract or solicitation shall within 24 hours, send by certified mail the final decision and the basis for the decision to the protestor.

5. The protestor may appeal the decision to the Airport Board of Directors within five business days of receipt of the final decision. Decisions of the Airport Board shall be final and subject to review or appeal by appropriate court action, or in some instances by proceedings before federal administrative agencies, in accordance with applicable law. No new facts or issues will be considered by the reviewing court or agency.

6. In the event some or all of the cost of the contract will be paid or reimbursed by the Federal Administration Agency (FAA), a protester may further submit protests that involve violation of federal laws or regulations (including a protest that the Airport did not follow its established protest procedures) to the FAA for consideration.

7. A bidder’s failure to follow the bid protest procedures constitutes a waiver of protest and resulting claims.

Adopted December 21, 2021