

RESOLUTION 2024-89

A RESOLUTION ADOPTING A REVISED PROCUREMENT PROTEST PROCEDURE OF THE CITY OF FRANKLIN, TENNESSEE

WHEREAS, on March 8, 2011, the Board of Mayor and Aldermen of the City of Franklin adopted Resolution No. 2011-10, a resolution adopting a vendor protest procedure for City procurements not pertaining to new construction; and

WHEREAS, on January 14, 2014, the Board of Mayor and Aldermen of the City of Franklin adopted Resolution No. 2014-07, a resolution adopting a vendor protest procedure for City procurements not pertaining to new construction; and

WHEREAS, on June 27, 2017, the Board of Mayor and Aldermen of the City of Franklin adopted Resolution No. 2017-42, a resolution adopting a vendor protest procedure for City procurements not pertaining to new construction; and

WHEREAS, on September 24, 2019, the Board of Mayor and Aldermen of the City of Franklin adopted Resolution No. 2019-80, a resolution adopting a vendor protest procedure for City procurements not pertaining to new construction; and

WHEREAS, on January 12, 2021, the Board of Mayor and Aldermen of the City of Franklin adopted Resolution No. 2020-216, a resolution adopting a vendor protest procedure for City procurements not pertaining to new construction; and

WHEREAS, on July 12, 2022, the Board of Mayor and Aldermen of the City of Franklin adopted Resolution No. 2022-42, a resolution adopting a vendor protest procedure for City procurements not pertaining to new construction; and

WHEREAS, on May 28, 2024, the Board of Mayor and Aldermen of the City of Franklin adopted Resolution No. 2024-37, a resolution adopting a vendor protest procedure for City procurements not pertaining to new construction; and

WHEREAS, the Board of Mayor and Aldermen believes it is in the best interest of the City of Franklin for the procedure to be further revised (a) in order to rename "Vendor Protest Procedure for City of Franklin procurements not pertaining to the design and/or construction of new infrastructure and facilities" to "Procurement Protest Procedure of the City of Franklin, Tennessee"; (b) in order to expand the purview of the procedure to include (1) the design and/or construction of new infrastructure and facilities and (2) improvements to existing infrastructure and facilities; (c) in order to identify the rejection of all submittals as another circumstance that is not actionable and that shall not be considered; and (d) in order to make miscellaneous other clarifications and other improvements to the procedure.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

Section 1. The Vendor Protest Procedure for City of Franklin procurements not pertaining to the design and/or construction of new infrastructure and facilities adopted by Resolution No. 2024-37, and any and all subsequent changes or revisions, are hereby repealed in their entirety. In place thereof, the Procurement Protest Procedure of the City of Franklin, Tennessee, attached as Exhibit A hereto, is

adopted.


Section 2. Changes or revisions to the procedure hereby adopted shall be made only by resolution of the Board of Mayor and Aldermen of the City of Franklin.

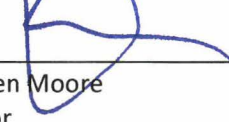
Section 3. The effective date of the procedure hereby adopted shall be January 1, 2025, the public welfare and the welfare of the City requiring it.

IT IS SO RESOLVED AND DONE on this 22nd day of October, 2024.


ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: 
Angie Skarp
City Recorder

By: 
Dr. Ken Moore
Mayor

Approved as to Form:

By: 
J. Blake Harper
Staff Attorney



Procurement Protest Procedure of the City of Franklin, Tennessee

The City of Franklin (“City”) recognizes that vendors (including suppliers, service providers and contractors) may, from time to time, feel compelled to lodge a formal protest about some aspect of a City procurement of goods and/or services. In order to promote fair and transparent competitive procurement, and in order to have a procedure to follow if and when the need arises, the City’s Board of Mayor and Aldermen (“Board”) therefore establishes this Procurement Protest Procedure of the City of Franklin, Tennessee as a procedure for evaluating and responding to Procurement Protests pertaining to prospective procurements by the City. This procedure is limited to City procurements (a) that are competitively solicited by the City pursuant to public advertisement and sealed submittals (including for both the design and/or construction of new infrastructure and facilities as well as the design and/or construction of improvements to existing infrastructure and facilities), and (b) for which the value of the award is or would be equal to or greater than \$50,000.

This Procurement Protest Procedure is a mandatory administrative procedure which all aggrieved actual or prospective vendors must utilize and exhaust prior to seeking judicial review or remedy. A protest based upon either the cancelation of a procurement solicitation, in whole or in part, or the rejection of all submittals, is not actionable and shall not be considered.

For the purposes of this procedure, the City defines the following terms:

- A “Procurement Protest” is either (a) a written objection by an Interested Party to a procurement solicitation issued by the City for sealed bids, proposals, offers, statements of qualifications or other submittals, pursuant to public advertisement, in anticipation of a proposed contract for the procurement of goods or services for which the value of the award is or would be equal to or greater than \$50,000, or (b) a written objection by an Interested Party to an intended award of such a contract.
- An “Interested Party” is an actual or prospective vendor whose direct economic interest would be affected either (a) by the award of a contract for the procurement of goods or services that are competitively bid by the City and where the value of the award is or would be equal to or greater than \$50,000 or (b) by the failure to award such a contract (except, as noted above, upon either the cancelation of a procurement solicitation, in whole or in part, or the rejection of all submittals).
- A “Procurement Protester” is an Interested Party who files a Procurement Protest.

A Procurement Protest:

- shall be in writing;
- shall be addressed and directed to the City’s Purchasing Manager (except in the case of Procurement Protests pertaining to requests for proposals issued by the City when an aggrieved proposer is protesting against the intended award to another proposer, in which case, pursuant to T.C.A. § 12-3-1207(d), the Procurement Protest shall be addressed to the Board c/o the City Attorney);
- may be delivered electronically or otherwise;
- must be received by the City by the applicable deadline listed below;
- shall include the name and address of the Procurement Protester;
- shall reference the relevant procurement solicitation issued by the City;
- shall include a statement of reason for the Procurement Protest, including allegations and evidence sufficient, if uncontradicted, to establish the likelihood of:



Procurement Protest Procedure of the City of Franklin, Tennessee

- a material deficiency or impropriety in the procurement solicitation issued by the City, such as:
 - a material defect to the procurement solicitation that caused or would cause a result other than in the absence of such defect and the consequence of which is significant;
 - some aspect of the procurement solicitation that created an unfair and material advantage to one or more prospective respondents to the procurement solicitation; or
 - a material violation of a relevant provision of one or more of the following:
 - a City procedure, policy, resolution, ordinance or other regulation governing the procurement; and/or
 - a state law, federal statute or other regulation governing the procurement;
- a material error or impropriety in the intended award of a contract or other procurement decision, such as:
 - an allegation that a procurement is not exempt from the City's standard competitive procurement procedures when such an exemption is claimed by the City;
 - a material error of judgment or fact in evaluating one or more of the responses to the procurement solicitation; or
 - a material violation of a relevant provision of one or more of the following:
 - the respective procurement solicitation issued by the City;
 - a City procedure, policy, resolution, ordinance or other regulation governing the procurement; and/or
 - a state law, federal statute or other regulation governing the procurement.
- may include supporting documents, exhibits, or evidence to substantiate the Procurement Protest;
- shall include a proposed remedy and an explanation of why the proposed remedy should be accepted by the City; and
- shall be signed by the Procurement Protester.

A Procurement Protest against either an alleged procurement solicitation deficiency or impropriety or an intended award, including in the case of Procurement Protests pertaining to requests for proposals issued by the City when an aggrieved proposer is protesting against the intended award to another proposer, must be filed by the following applicable deadline:

- A Procurement Protest against an alleged procurement solicitation deficiency or impropriety must be filed between (a) the date when the City posts a formal solicitation for sealed competitive submittal on the City's public-facing website and (b) the date when the sealed response to the procurement solicitation is due to be submitted and opened or, if there is no such deadline, within seven (7) calendar days of the date the Procurement Protester first becomes aware of the City's procurement solicitation.
- A Procurement Protest against an intended award must be filed within seven (7) calendar days of the earlier of either (a) the date the Procurement Protester is notified by the City of the intent to award or (b) the date the intent to award is posted on the City's public-facing website.



Procurement Protest Procedure of the City of Franklin, Tennessee

In the case of a Procurement Protest against an intended award, including in the case of Procurement Protests pertaining to requests for proposals issued by the City when an aggrieved proposer is protesting against the intended award to another proposer, the Procurement Protester must direct copies of its Procurement Protest to any and all other parties who have responded to the same procurement solicitation and who have a direct economic interest in the outcome of the Procurement Protest, and must submit proof that such copies have been so provided. Failure to submit such proof shall result in dismissal of the Procurement Protest. The other parties shall be permitted to respond in writing to the Procurement Protest, provided that such response shall be submitted within seven (7) calendar days after the other parties' receipt of the copy of the Procurement Protest. The other parties shall also be permitted to participate in any in-person or virtual meetings conducted by the City in regard to the Procurement Protest.

Upon receipt of a timely Procurement Protest, the City shall not proceed further with either the procurement solicitation or the award of the contract unless the City Administrator makes a written determination that so proceeding without delay is necessary to protect the public health, safety or welfare of the City.

Except in the case of Procurement Protests pertaining to requests for proposals issued by the City when an aggrieved proposer is protesting the intended award to another proposer, the following steps shall be followed for formal protests:

- In the case of a Procurement Protest against an alleged procurement solicitation deficiency or impropriety, the Purchasing Manager shall respond in writing to the Procurement Protest within ten (10) City business days of receipt of the Procurement Protest.
- In the case of a Procurement Protest against an intended award, the Purchasing Manager shall respond in writing to the Procurement Protest within fifteen (15) City business days of receipt of the Procurement Protest.
- The Purchasing Manager shall consider the Procurement Protest and issue a determination in writing. The Purchasing Manager may:
 - determine that the Procurement Protest does not merit a revision of the City action or decision being protested; or
 - determine that the Procurement Protest does merit a revision of the City action or decision being protested and proceed accordingly to take corrective action, which may include recommending the City cancel the procurement solicitation, recommending the City reject any and all responses to the procurement solicitation, recommending the City award the procurement to a different respondent, and/or recommending the City start over with a new procurement solicitation.
- If the vendor is dissatisfied with the Purchasing Manager's decision, then the vendor may, within seven (7) calendar days of receipt of the Purchasing Manager's decision, appeal in writing that the matter be considered by the City Administrator, as follows:
 - The appeal shall be addressed and directed to the City Administrator and shall include a statement of reason for the appeal, noting on what basis the vendor believes the Purchasing Manager's decision is incorrect and how and why the Purchasing Manager's decision should be overturned in whole or in part.
 - The City Administrator shall consider the appeal within ten (10) City business days of receipt of the appeal.



Procurement Protest Procedure of the City of Franklin, Tennessee

- After consideration of the appeal and deciding whether to affirm or overturn the Purchasing Manager's decision, the City Administrator shall, within ten (10) City business days of the City Administrator's decision, respond in writing to the appeal and convey the decision of the City Administrator, after which the City shall proceed accordingly. The City Administrator may:
 - affirm the Purchasing Manager's decision in whole or in part; or
 - overturn the Purchasing Manager's decision in whole or in part.
- The decision of the City Administrator shall be final, and no further appeals shall be considered by the City.

In the case of Procurement Protests pertaining to requests for proposals issued by the City when an aggrieved proposer is protesting the intended award to another proposer, the following steps shall be followed for formal protests:

- The Board shall, within forty-five (45) calendar days of the City Attorney's receipt of the Procurement Protest, consider the Procurement Protest. The Board may:
 - determine that the Procurement Protest does not merit a revision of the City action or decision being protested; or
 - determine that the Procurement Protest does merit a revision of the City action or decision being protested and direct the City Administrator to proceed accordingly to take corrective action, which may include canceling the procurement solicitation, rejecting any and all responses to the procurement solicitation, awarding the procurement to a different respondent, and/or starting over with a new procurement solicitation.
- The decision of the Board shall be final, and no appeals shall be considered by the City.
- Within ten (10) City business days of the Board's decision, the City Attorney shall respond in writing to the Procurement Protest and convey the Board's decision.