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ITEM #3  
FINANCE  
01-26-2011

## MEMORANDUM

January 19, 2011

**TO:** Budget & Finance Committee of the Board of Mayor & Aldermen

**FROM:** Eric Stuckey, City Administrator *ES*  
Russell Truell, Assistant City Administrator for Finance & Administration  
Brian Wilcox, Purchasing Manager

**SUBJECT:** Consider establishing a procedure for evaluating and responding to vendor protests for procurements not involving new construction

### Purpose

The purpose of this initiative is to propose that the City establish a formalized procedure for evaluating and responding to vendor protests for procurements not involving new construction.

### Background

In the field of public purchasing, with respect to the subject of vendor protests, best practice for local governments is to establish and adhere to policies and procedures that promote open and fair competition in order to minimize the number of times a vendor would feel the need to file a protest in the first place. Nevertheless, having a procedure in place to follow in the event a protest is filed is important as another display of transparency in the procurement function, and provides direction to staff as to how protests should be handled.

The City of Franklin assigns responsibility for facilitating competitive purchases involving sealed submittals pursuant to published notice depending upon whether the purchase involves new construction. Those that do are handled by the Engineering Department, while those that do not are facilitated by the Purchasing Office. In the case of new construction, the Engineering Department already has practices in place for evaluating and responding to vendor protests. The subject of this memorandum and the attached proposed procedures is limited to procurements not involving new construction.

### Financial Impact

Establishing a formalized procedure for evaluating and responding to vendor protests for procurements not involving new construction would serve to promote best pricing by providing for a process for vendors to air objections. The vendor community is most likely to compete for the City's business when they know the City's rules and feel confident that those rules offer a fair opportunity for open competition.

### Options

Attached, staff has proposed a protest procedure that identifies an appeals process. A variation on the appeals steps would be to include the Board of Mayor and Aldermen. Staff does not recommend doing so inasmuch as the Board is the source of the award decision whenever a process involving sealed submittals pursuant to published notice is being utilized.

### Recommendation

Staff recommends the Board of Mayor and Aldermen vote to establish a formalized procedure for evaluating and responding to vendor protests for procurements not involving new construction. A proposed procedure is attached.



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## **Vendor Protest Procedure for City of Franklin procurements not involving new construction**

The City of Franklin recognizes that a vendor may, from time to time, feel compelled to lodge a formal protest about some aspect of a City procurement not involving new construction. In order to promote fair and transparent competitive purchasing, and in order to have a procedure to follow if and when the need arises, the City of Franklin Board of Mayor and Aldermen therefore establishes a procedure for evaluating and responding to vendor protests for procurements not involving new construction. This procedure is limited to City procurements that do not involve new construction. Procurements that do involve new construction are facilitated by the City of Franklin Engineering Department, and any vendor wishing to lodge a protest about a City procurement involving new construction should contact the Engineering Department directly.

The following steps shall be followed for formal protests not involving new construction:

- Vendor protest shall be in writing and shall be addressed and directed to the City of Franklin Purchasing Manager. Vendor protests shall be submitted within three (3) City business days of the award. The Purchasing Manager shall respond in writing to the protest within three (3) City business days of receipt of the protest.
- If the Purchasing Manager is unable to resolve the matter to the satisfaction of the vendor, then the vendor may request in writing that the matter be appealed to a purchasing appeals panel consisting of:
  - The director of the requisitioning department, or designee
  - A City employee, designated by the director of the requisitioning department, who is knowledgeable about the product or service to be procured
  - The Assistant City Administrator for Finance & Administration who will chair the panel.

The decision of the purchasing appeals panel shall be final and no further appeals shall be considered by the City.