HISTORIC
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Vendor Protest Procedure

for City of Franklin procurements not pertaining to the design and/or construction of new infrastructure and facilities

The City of Franklin ("City") recognizes that a vendor may, from time to time, feel compelled to lodge a formal protest about some aspect of a City procurement of goods and/or services not pertaining to the design and/or construction of new infrastructure and facilities. 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's Board of Mayor and Aldermen therefore establishes a procedure for evaluating and responding to Vendor Protests for procurements not pertaining to the design and/or construction of new infrastructure and facilities. This procedure is limited to City procurements (a) that do not pertain to the design and/or construction of new infrastructure and facilities, (b) that are competitively solicited by the City pursuant to public advertisement and sealed submittals, and (c) for which the bid or contract amount is equal to or greater than $25,000. Procurements that do pertain to the design and/or construction of new infrastructure and facilities are facilitated by the City's Engineering Department, and any vendor wishing to lodge a protest about a City procurement pertaining to such construction-related purchases should contact the Engineering Department directly.

This Vendor 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.

In the case of Vendor Protests pertaining to requests for proposals issued by the City, an aggrieved proposer may protest the intended award to another proposer if a protest is filed within seven (7) calendar days after the intended award is announced. The protest shall be filed with and decided by the Board.

The following provisions apply unless the Vendor Protest pertains to a request for proposals issued by the City:

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

- A "Vendor Protest" is a written objection by an Interested Party to a 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 not pertaining to the design and/or construction of new infrastructure and facilities and for which the bid or contract amount is equal to or greater than $25,000, or a written objection by an Interested Party to a proposed award of such a contract.

- An "Interested Party" is an actual or prospective vendor whose direct economic interest would be affected by the award of a contract for the procurement of goods or services not pertaining to the design and/or construction of new infrastructure and facilities that are competitively bid by the City and where the bid or contract amount is equal to or greater than $25,000 or by the failure to award such a contract.

- A "Protestor" is an Interested Party who files a Vendor Protest.

A Vendor Protest:

- shall be in writing;
- shall be addressed and directed to the City's Purchasing Manager;
- may be delivered electronically or otherwise;
- must be received by the City's Purchasing Office by the applicable deadline listed below;
- shall include the name and address of the Protestor;

- shall reference the relevant procurement solicitation issued by the City;
- shall include a statement of reason for the Vendor Protest, including allegations and evidence sufficient, if uncontradicted, to establish the likelihood of:
    - 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 proposed or actual 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 Vendor 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 protester.

A Vendor Protest to either a procurement solicitation or a proposed award must be filed by the following applicable deadline:

- A Vendor Protest against an alleged procurement solicitation deficiency or impropriety must be filed prior to the deadline for responding to the solicitation or, if there is no such deadline, within seven (7) calendar days of the date the Protestor first becomes aware of the City's solicitation.

- A Vendor Protest against a proposed award must be filed within seven (7) calendar days of the date the Protestor is notified by the City of the intent to award or the date the intent to award is posted on the City's website, whichever occurs earlier.

In the case of a Vendor Protest against a proposed award, the Protestor must direct copies of its Vendor 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 Vendor Protest, and must submit proof that such copies have been so provided. Failure to submit such proof shall result in dismissal of the Vendor Protest. The other parties shall be permitted to respond in writing to the Vendor Protest, provided that such response shall be submitted within seven (7) calendar days after the other parties' receipt of the copy of the Vendor Protest. The other parties shall also be permitted to participate in any in-person meetings conducted by the City in regard to the Vendor Protest.

Upon receipt of a timely Vendor 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.

The following steps shall be followed for formal protests not pertaining to the design and/or construction of new infrastructure and facilities:

- The Purchasing Manager shall respond in writing to the Vendor Protest within ten (10) City business days of receipt of the Vendor Protest. The Purchasing Manager shall consider the Vendor Protest and issue a determination in writing. The Purchasing Manager may:

    - determine that the Vendor Protest does not merit a revision of the City action or decision being protested; or
    - determine that the Vendor Protest does merit a revision of the City action or decision being protested and proceed accordingly to take corrective action, which may include canceling the procurement solicitation, rejecting any and all responses to the solicitation, recommending that a different respondent to the procurement solicitation be awarded the procurement, and/or considering whether and when to start anew.

- If the vendor is dissatisfied with the Purchasing Manager's decision, then the vendor may request in writing that the matter be considered by the Vendor Protest Appeals Panel of the City which shall consist of:

    - the Assistant City Administrator for Finance & Administration, who shall chair the panel;
    - the director of the requisitioning department, or his or her designee; and
    - the Assistant City Administrator for Community Development.

    After consideration of the appeal, the Vendor Protest Appeals Panel shall issue a decision in writing, after which the City shall proceed accordingly. The Vendor Protest Appeals Panel 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 Vendor Protest Appeals Panel shall be final, and no further appeals shall be considered by the City.