



PROTEST PROCEDURES AND PROTEST BOND REQUIREMENTS

The Open File Period for this solicitation begins on 5/23/23 and ends on 5/30/23. Any protest of this solicitation is due by 4:30 p.m. CST on 5/30/23 to the Central Procurement Office at the address listed below:

Michael F. Perry
Chief Procurement Officer
-and-
Paul Krivacka
Director of Category Management and Chief Legal Counsel
Central Procurement Office
Dept. of General Services
WRS Tower, 3rd Floor
312 Rosa L. Parks Blvd.
Nashville, TN. 37243-1102
Tele: (615) 741-1035
Fax: (615) 741-0684

Any respondent who has submitted a response to RFQ 34360-90823 Electronic Consultation (eConsult) and who claims to be aggrieved in connection with the solicitation, award, or proposed award of a contract may submit a protest to the Chief Procurement Officer. Under Tenn. Code Ann. § 12-3-514, any protest of this solicitation must:

- Be submitted in writing;
- Be submitted within seven (7) calendar days after the day on which the notice of award or notice of intent to award is issued, whichever occurs first;
- Include and describe all grounds for the protest; and
- Include a protest bond payable to the State in the amount identified below *unless* the protest bond exemption under Tenn. Code Ann. § 12-3-514(g) applies and the protesting party provides a written exemption petition.

As established by Tenn. Comp. R. & Regs. 0690-03-01-.12(2), the following are the sole grounds for a protest:

- The contract award was arbitrary, capricious, an abuse of discretion, or exceeded the authority of the awarding entity;
- The procurement process violated a constitutional, statutory, or regulatory provision;
- The awarding entity failed to adhere to the rules of the procurement as set forth in the solicitation and this failure materially affected the contract award;

- The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; and
- The contract award resulted from a technical or mathematical error during the evaluation process.

The amount of the protest bond shall be:

- Five percent (5%) of the maximum liability or estimated maximum liability provided in the solicitation

The protest bond amount required for this solicitation is one hundred seventy-eight thousand two hundred dollars and zero cents (\$178,200.00).

Upon the Chief Procurement Officer's receipt of a protest and protest bond, a stay of the solicitation, proposed award, or award will go into effect until the protest is resolved in accordance with Tenn. Code Ann. § 12-3-514.

Protest Bond Example

The following is an example of a protest bond whose form and substance are acceptable to the State of Tennessee Central Procurement Office:

PROTEST BOND

The surety company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. Bonds shall be certified and current Power-of-Attorney for the Surety's Attorney-in-Fact attached.

KNOW ALL BY THESE PRESENTS:

That we, **Example**

(Name of protesting party)

(Address of protesting party)

as the party filing a protest of the State of Tennessee's determination(s) regarding a solicitation, an award, or a proposed award of a contract, (hereinafter called the "Protesting Party"), and

(Name of surety)

(Address of surety)

as surety, (hereinafter called the "Surety"), do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee ("State") in the penal sum of written amount (\$ number) for payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

THE CONDITION OF THIS BOND IS THIS:

WHEREAS, the State has issued [solicitation name] (Solicitation No. #);

AND, the Protesting Party, as an entity that has submitted a response to Solicitation No. #, claims to be aggrieved in connection with the solicitation, award, or proposed award of a contract;

AND, the signature of an attorney or the Protesting Party on a protest or other document constitutes a certificate by the signer that the signer has read the document and to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;

Example

AND, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protesting Party posts a protest bond, the Protesting Party does file this protest bond payable to the State with a notice of protest regarding the procurement process;

AND, the State shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination of the protest by the chief procurement officer;

AND, if the Protesting Party appeals the chief procurement officer's determination to the protest committee, the chief procurement officer shall hold the protest bond until instructed by the protest committee to either keep the bond or return it to the Protesting Party.

NOW, THEREFORE, this bond shall remain in full force and effect and shall be immediately payable to the State after the Protesting Party has had an opportunity to oppose the payment of this bond and a finding by the protest committee that:

1. The protest or other document was signed, before or after appeal to the chief procurement officer or protest committee, in violation of Tenn. Code Ann. § 12-3-514(c);
2. The protest has been brought or pursued in bad faith;
3. The affected state agency has suffered damages resulting in loss of funding, increased expenditures, or a disruption in services; the protest was filed in bad faith or in violation of Tenn. Code Ann. § 12-3-514(c); and the protest was not upheld;
4. The protest does not state on its face a valid basis for protest; or
5. For any other reason approved by the protest committee.

Otherwise, this bond shall be null and void.

IN WITNESS WHEREOF, the Protesting Party and Surety have executed this instrument and each has affixed its name and signature by its duly authorized officers, on this

_____ day of _____ in the year _____.

WITNESS:

(Name of Protesting Party)

(Name of Surety)

(Authorized signature of Protesting Party)

(Signature of attorney-in-fact)

(Name of signatory)

(Name of attorney-in-fact)

(Title of signatory)

(Surety's Tennessee license number)