

<b>System-wide Policy:</b>	
<b>Procedure for Procurement: FI0405 - Solicitation Respondents' Protests</b>	
<b>Version: 1</b>	<b>Effective Date: 03/05/2024</b>

## Objective

This procedure states the process that a respondent can follow to file a formal objection to the university's decision on a given solicitation. This formal objection is known as a "protest."

## Scope

This procedure addresses the protest process, which impacts procurement agents, procurement leadership, campus and system financial leadership, and departmental stakeholders. For purposes of this procedure, proposals (under RFPs) and bids (under RFQs) are referred to as "bids" and the vendors who participate in the solicitation process are referred to as "bidders."

## Procedure

### I. Protest Period

- A. **Notice of Intent to Award:** Once the University has made a final decision regarding which bidder or bidders will receive a notice of intent to award, the University's Procurement departments will announce the winning bidders of:
  - 1. All RFPs;
  - 2. All RFQ-Ss; and
  - 3. When awarding to other than the lowest bidder who met specifications in RFQs.
- B. As stated above, the University will only issue a Notice of Intent to Award when a tentative award resulted from one of the processes listed in section I(A). The Procurement department will communicate the award to all bidders via electronic communication.
- C. It is the bidder's responsibility to contact the University to obtain the bid results. After procurement sends this notice, the bid files are a public record (as defined by the Tennessee Public Records Act). Tennessee Code Annotated § 12-3-502 makes all information that bidders provide to the University during the procurement process available for inspection. Accordingly, the University will provide unredacted documents for inspection. The University will only redact information that state law requires be redacted, such as Social Security Numbers.
- D. Bidders may file a protest within a 7-calendar day period starting on the day after procurement sends the notice and ending at 5:00 PM local University time on the 7th calendar day (note; the University has offices in Eastern and Central time zones).

### II. Right to Protest

- A. Bidders may not protest the University's cancellation of a solicitation, even if the University cancels a solicitation after the University issues a notice of intent to award.

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- B. Bidders who submit a response (either a substantive bid or a “no-bid”) may protest the University’s award.
- C. Bidders who violated the terms of a solicitation are ineligible to protest.
- D. Bidders who attempt to influence the outcome of a bid by communicating with University officials other than procurement officials are ineligible to protest and are immediately disqualified from the given solicitation.
- E. Bidders may raise one or more of the items listed below as the basis of their protest, and no others:
  - 1. The award was arbitrary, capricious, an abuse of discretion, or exceeded the authority of the procurement department.
  - 2. The procurement process was conducted contrary to University policy or state law.
  - 3. The applicable procurement department did not follow the terms of the solicitation document, and such failure to follow the terms of the solicitation document materially affected the University’s decision to award to a particular bidder.
  - 4. The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
  - 5. The applicable Procurement department or the evaluation committee made a material error or mathematical mistake during the evaluation process.

### III. Protest after the Notice of Intent to Award

- A. Any bidder, who has submitted a bid or a no-bid, may file a written protest with the procurement office. Any issues raised by the protesting party after the 7-day protest period will not be considered as part of the protest.
- B. The University assumes that a protesting respondent has the relevant procurement file. Protesting respondents are responsible for requesting any information that the protesting respondent believes is missing.
- C. A written protest filed by a bidder with the procurement department must enumerate and detail all grounds for the protest in accordance with these rules.
- D. The bidder must deliver to the purchasing office within 7 calendar days noted above and must be accompanied by a bond or a request for exemption from the protest bond. The University will calculate the 7-day time period as stated in section I(D) of this procedure.

### IV. Protest Bond

- A. Generally
  - 1. To be eligible to protest an award, the protesting bidder must include a bond with their protest or must qualify for an exemption from the bond requirement.

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2. The protesting bidder's bond must be an original negotiable instrument made payable to the University of Tennessee.
- B. Notice
1. The protesting bidder must communicate only with the applicable University Procurement office.
  2. The protesting bidder must file their protest with the procurement agent/buyer who facilitated the bid process.
- C. Amount
1. The protest bond must be in the amount of:
    - a) 5% of the cumulative value of the lowest cost proposal evaluated, when the solicitation involved a fixed cost award (for example, if a competitive bid was for five years, the cumulative value would be 5% of the total five-year amount; if a competitive bid is for a certain term and optional extension terms, the full potential term with all options to extend will be deemed the term for purposes of calculating the 5% value); or
    - b) 5% of the University's estimated maximum costs when the University's actual costs are not known or the costs might vary over the life of the resulting award (the University has sole discretion to determine the estimated maximum costs; generally, the University will use previous spend as a baseline for calculating the estimated costs); or
    - c) 5% of the estimated maximum revenue, if the solicitation involves the University receiving revenue.
  2. If the protesting bidder submits a copy of a negotiable instrument or otherwise fails to provide an original negotiable instrument to the University, the University will reject the protest.
- D. Return
1. The University may return the protest bond to the protesting bidder within 15 business days from the date that the University issued a final response to the protesting bidder.
- E. Retention and Deposit
1. The University may retain and deposit the protest bond if the University determines that the protesting bidder submitted the protest:
    - a) in bad faith, or
    - b) submitted the protest in an attempt to delay the University's process, or
    - c) to harass a University staff member.
- F. Exemption
1. In compliance with T.C.A. § 12-3-514, if the lowest evaluated cost proposal is less than \$1,000,000, a business that is certified by the Tennessee Governor's Office of Diversity Business Enterprise (Go-DBE) as a Diversity Business Enterprise may request an exemption from the protest bond

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requirement. If the bidder has an active certification from Go-DBE, the University will not require the bidder to include a bond with their protest.

2. If the University grants an exception to the protest-bond requirement due to the protesting party having an active Tennessee Go-DBE certification, the protesting party's protest will proceed.
3. If the protesting party does not have an active Tennessee Go-DBE certification on the day that the protesting party requests an exception to the protest-bond requirement, the University will deny the protesting party's request.

**V. Awards Before and During Protests**

- A. The University may proceed with an award before or after receiving a protest.

**VI. Public Records**

- A. All protest documentation is a public record.

**VII. Resolution of Protests**

**A. Procurement Director**

1. Each procurement director has the authority to issue a response to a bidder's protest. The procurement director must issue their response within 60 calendar days from receipt of the bidder's protest.

**B. Chief Business Officer**

1. If the bidder believes that the procurement director's response was made in error, the protesting bidder may request that the applicable Chief Business Officer review the procurement director's decision by submitting a request in writing to the applicable Chief Business Officer within 7 calendar days from the date of the procurement director's decision.
2. When a protesting bidder requests that the Chief Business Officer review the procurement department's decision, the protesting bidder may only rely on facts raised in the protester's original protest document and on items in the procurement director's response. The protestor may not raise any other facts or arguments.
3. The Chief Business Officer must issue their response within 90 calendar days from receipt of the protestor's request to review.

**C. Chief Financial Officer**

1. If the bidder believes that the Chief Business Officer's response was made in error, the protesting bidder may request that the University's Chief Financial Officer review the Chief Business Officer's decision by submitting a request in writing to the Chief Financial Officer within 7 calendar days from the date of the Chief Business Officer's decision.
2. When a protesting bidder requests that the Chief Financial Officer review the Chief Business Officer's decision, the protesting bidder may only rely on facts raised in the protester's original protest document and on items in

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- the procurement director’s response and the Chief Business Officer’s response. The protestor may not raise any other facts or arguments.
3. The Chief Financial Officer must issue their response within 90 calendar days from receipt of the protestor’s request to review.

**VIII. Administrative Procedures Act**

- A. The University will conduct its protest review process in compliance with the Tennessee Uniform Administrative Procedures Act. See Tennessee Code Annotated § 4-5-301, et. seq.
- B. Bidders who file a protest must comply with the Tennessee Uniform Administrative Procedures Act.

**Responsible Official & Additional Contacts**

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	UTSA Policy Office	865-974-3971	<a href="mailto:Breagan@tennessee.edu">Breagan@tennessee.edu</a>

**Related Policies/Guidance Documents**

- FI0130
- FI0315
- FI0420
- FI0425
- FI0445
- FI0525
- FI0530
- FI0620
- GE0002