

**CITY OF VERSAILLES, KENTUCKY  
MUNICIPAL ORDER 2021-12**

**TITLE: A MUNICIPAL ORDER ESTABLISHING PROCEDURES FOR BID PROTESTS IN THE CITY OF VERSAILLES, KENTUCKY.**

WHEREAS, the receipt and determination of protests by actual or prospective bidders and offerors in connection with the solicitation or selection for award of a contract is an essential component of maintaining the integrity in the procurement process.

NOW THEREFORE, BE IT ORDERED by the City of Versailles, Kentucky that the following shall apply:

**SECTION 1 – DELEGATION OF AUTHORITY**

The Versailles City Council determines that the City Clerk/Treasurer has the authority to determine protests for procurements conducted under the City of Versailles' Procurement Code, Ordinances 33.01 through 33.02.

**SECTION 2: THE PROTEST**

A protest can be made either (1) to the solicitation documents or (2) to an award of contract based upon the solicitation. The protest process for Invitations for Bids ("IFB") and for Request for Proposals ("RFP") is the same.

**SECTION 3: PROTEST TO A SOLICITATION**

Any prospective bidder may file a protest to the content of solicitation documents. A party seeking to establish standing as a "prospective bidder" must show that it has a direct economic interest that will be impacted by the award of the contract or by the failure to award the contract. A prospective bidder has standing when it shows it had a substantial chance of obtaining the award. A protest to the solicitation documents is directed at the contents of the solicitation, for example, the protest may concern an irregularity in the evaluation process apparent from the face of the solicitation document itself.

A protest to a solicitation should be filed *before* the protestor actually submits a bid or proposal. Once a party submits a bid or proposal to a solicitation and the bids are opened, the protestor then has waived all objections to the solicitation document not previously raised.

**SECTION 4: PROTEST TO AN AWARD**

In general, only an actual bidder can file a protest to an award of contract. A protestor is an "actual bidder" if the protestor has submitted a bid or proposal. A protest to an award of contract may concern, for example, mistakes in the application of the evaluation process. A party may protest the award of a non-competitive contract such as a sole source award if it can demonstrate that it would have bid on the contract if it had been competitively bid.

**SECTION 5: WHERE TO PROTEST**

All protests must be in writing. The written protest must be delivered to the City Clerk/Treasurer. The City Clerk/Treasurer will investigate, analyze, and determine the protest. The address of the City Clerk/Treasurer is 196 South Main Street, Versailles, Kentucky 40383.

In order to ensure the protest is timely, it should be *received* by the City Clerk/Treasurer within the applicable time limits.

**SECTION 6: TIME LIMITS FOR FILING A PROTEST**

A protest must be filed promptly and, in any event, within fourteen (14) calendar days after the aggrieved person *knows or should have known* of the facts giving rise thereto. This requirement applies both to an initial protest and to revisions or supplements to the protest.

“Filed” means *actual receipt* by the City Clerk/Treasurer. For purposes of computing the fourteen (14) calendar day deadline for the submission of a protest, the following legal presumptions apply:

(a) For protests based upon alleged improprieties in a solicitation for bids or proposals which relate to the solicitation documents themselves, the facts giving rise to the protest shall be presumed to have been known to the protester on the date the solicitation, or a modification to it, was posted to the City of Versailles’ website.

(b) For protests based upon alleged improprieties in the award of a contract, the facts giving rise to the protest shall be presumed to have been known to the protester on the date the contract award was posted to the City of Versailles’ website.

A legal presumption is a fact assumed from the specific circumstances. The legal presumption in this case may be overcome upon presentation of evidence showing that the facts giving rise to the protest were not and could not have been known to the protester on the date presumed by the regulation. The inquiry about when the protestor “knew or should have known” the factual basis giving rise to the protest is guided therefore by the (1) availability of the relevant facts and (2) the protestor’s diligence to uncover those facts.

The fourteen (14) day period in which to file a protest does not include the day on which the alleged basis for protest arises. If the last day of the fourteen (14) calendar day period within which a protest is to be filed falls on a Saturday, Sunday, or Legal Holiday, the period in which to file a protest is extended to the next day not a Saturday, Sunday, or Legal Holiday. Thus, if an award of contract is made on a Friday, the fourteen (14) calendar day period would commence on the next day, Saturday, and run through the Saturday fourteen (14) days later. Since the time period in which to file a protest ends on Saturday, the time in which to file a protest would be extended to the following Monday.

Note, however, that the City Clerk/Treasurer will not extend the fourteen (14) calendar day period if a Legal Holiday or other event excusing a filing on the fourteenth (14<sup>th</sup>) day occurs on another day during the applicable time period. Thus, for example, if the City of Versailles’ office is closed for a Legal Holiday on the thirteenth (13<sup>th</sup>) calendar day but is open on the fourteenth (14<sup>th</sup>) calendar day, the thirteenth (13<sup>th</sup>) day will still count against the fourteen (14) day time period, and the protest must be filed on the next calendar day.

New factual allegations made in submissions after the initial protest, without a new and separate showing of timeliness, will be disregarded as untimely. The inquiry about when the protestor "knew or should have known" the factual basis giving rise to the protest is guided by the (1) availability of the relevant facts and (2) the protestor's diligence to uncover those facts. Further, new legal arguments made in submissions after the initial protest, such as additional grounds of protest, will also be disregarded.

## **SECTION 7: CONTENTS OF THE WRITTEN PROTEST**

A written protest *must* contain the following information:

- (1) Name, address, fax and telephone numbers, and e-mail address of the protestor;
- (2) Solicitation or contract number;
- (3) Detailed statement of the legal and factual grounds for the protest, including a description of the prejudice resulting to the protestor;
- (4) Copies of documents ready reference to which is believed necessary to assess the factual or legal basis of the protest;
- (5) Statement as to the form of relief requested;
- (6) The date the facts giving rise to the protest became known to the protestor; and
- (7) If necessary to rebut the presumption, include all relevant factual information establishing the timeliness of the protest and the purported improprieties in order to be sufficient for a justifiable finding of timeliness under that statutory provision. Failure to comply with this subsection, if necessary, shall conclusively render the protest untimely.
- (8) A protest which fails to contain the required information may be denied solely on that basis.

## **SECTION 8: PROTEST RECORD**

The protest will be determined based on the protest record. For a protest to a solicitation, the record will consist of: (1) the protest, (2) the agency response, and (3) the solicitation. For a protest to an award, the record will consist of: (1) the protest, (2) the agency response, (3) the awardee response, (4) the solicitation, (5) the bids or proposals, (6) the official Determination and Finding, and (7) the contract. Should a protestor wish to include additional documents in the record, the protestor must include such additional documents within the time required.

## **SECTION 9: EFFECT OF A TIMELY PROTEST**

In the event that a protest is timely filed, the City of Versailles will not proceed further with the solicitation or the award involved, unless the City Clerk/Treasurer makes a written determination that continuation of the procurement is necessary to protect substantial interests of the City.

**SECTION 10: DETERMINATION OF THE PROTEST**

When a protest is filed with respect to an award of contract, the contract awardee will be provided with a copy of the protest and invited to respond within fourteen (14) calendar days. A hearing is not available.

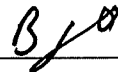
The City Clerk/Treasurer will issue a written determination of the protest. The City Clerk/Treasurer will only issue a determination of the grounds asserted in the protest. A protest which is untimely, fails to establish standing to protest, or fails to include the information required will be summarily determined and denied. In other cases, the determination will contain findings of fact, an analysis of the protest, and a conclusion that the protest be either sustained or denied. If the protest is sustained, remedies include canceling the solicitation, canceling the award, rescoring the bidders or offerors, or other remedies appropriate to the situation.

The decision of any official, board, agent, or other person appointed by the Commonwealth or the City concerning any controversy arising under, or in connection with, the solicitation or award of a contract, shall be entitled to a presumption of correctness and shall not be disturbed unless the decision was procured by fraud or the findings of fact by such official, board, agent or other person do not support the decision.

The decision by the City Clerk/Treasurer (or their designee) is final and conclusive. Thus, there is no basis to request or authority for a re-consideration of the decision.

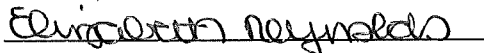
Introduced and fully adopted at a meeting of the City Council of the City of Versailles, Kentucky held on July 6, 2021.

APPROVED:



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BRIAN TRAUOGOTT, MAYOR

ATTEST:



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ELIZABETH REYNOLDS, CITY CLERK