

Tupelo Public School District

School Nutrition

Bid Protest Procedure

I. Purpose of Bid Protest Procedure

The procedures set forth herein and issued by the Tupelo Public School District, establish the guidelines relating to the filing, hearing, decision, and appeal of protests by any actual prospective bidder or contractor who is aggrieved in connection with the bidding or award of a contract.

II. Definitions

When used in reference to this procedure:

- a. The term "Protestor" means any actual or prospective bidder or contractor who is aggrieved in connection with the bidding or award of a contract which meets School Board approval requirements and who files a protest.
- b. The term "Interested Party" means any party who has identified him/herself in writing as such to the Child Nutrition Director.
- c. The term "Board Attorney" means the individual assigned by the Superintendent of the Tupelo Public School District to provide legal assistance to the Foodservice Administrator.
- d. The term "Board" means the membership of the Tupelo Public School District Board of Education.

III. Right to Protest

Any actual or prospective bidder, offerer, or contractor who is aggrieved in connection with the solicitation or award of a contract which meets Board approval requirements may file a protest.

IV. Subject of Protest

Protestors may file a protest on any phase of solicitation or award including, but not limited to, specifications, bid solicitation, or award.

V. Authority to Resolve Protests

The Superintendent or his/her designee shall have the authority to settle and resolve a protest of an aggrieved bidder, offerer, or contractor, actual or prospective, concerning the specifications, solicitation, or award of a contract.

a. Protest of Specification/Product Code Number

Within ten (10) calendar days of the date the Invitation to Bid is mailed, the protestor must submit in writing to the Superintendent the reason for the protest. The Superintendent shall review specifications and product code numbers and based on the facts:

1. issue an addendum
2. withdraw solicitation and rebid
3. reject protest

b. Protest of Award

Protest filed against bid award must proceed with steps VI-XX.

VI. Filing of Protest

a. Time for Filing

Protests shall be made in writing and submitted in an envelope labeled "Protest" to the Superintendent within seven (7) calendar days after the protestor knows or should have known of the facts giving rise thereto. A protest is deemed filed when received by the Superintendent.

b. Limitations on Time for Filing

No protest will be entertained if filed more than seven (7) calendar days after the award of a contract.

VII. Content of Protest

The written protest shall contain the following:

- a. the name, mailing address, telephone number, and fax number of the protestor;
- b. appropriate identification of the procurement or contract protested;
- c. a statement, in sufficient detail, of the facts upon which the protest is based, including the effective date of any alleged grievable action and why such action is believed to be in error;
- d. supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected date the information will be available shall be indicated; and,
- e. a statement of the relief requested.

VIII. Notification

Upon receipt of a written protest, the Superintendent shall submit a copy of the protest to the Board Attorney and the School Nutrition Director.

IX. Stay of Procurement

In the event of a timely protest, the State shall not proceed further with the solicitation or award of the contract until the resolution of the protest, unless the Superintendent, after conferring with the Foodservice Administrator, makes a determination that in order to protect substantial interests of the school district, it is necessary to go forward with the solicitation or award of the contract.

X. Additional Information- Time for Filing

Any additional information requested by any of the parties should be submitted within the reasonable time period established by the requesting source in order to expedite consideration of the protest. Failure of any party to comply expeditiously with a request for information by the Superintendent may result in the protest being resolved without additional information being considered.

XI. Protest Process Committee

The Superintendent shall appoint a committee to review all protests. The School Nutrition Director shall present the protest materials to the Protest Process Committee who shall consist of:

1. Superintendent
2. Deputy Superintendent
3. Finance Director

XII. Scheduling of Protest Conference

When a protest is filed, the Superintendent shall determine if a protest conference is needed and appropriate. If so, a date, time, and place for the protest conference will be scheduled and a notice of same will be sent via personal delivery or by certified United States Mail, postage prepaid, return receipt requested, to the protestor, the procuring school district or institution, and any interested party.

XIII. Rescheduling of Protest Conference

Continuances requested by any party to the protest shall be granted within the discretion of the Superintendent only for good cause shown.

XIV. Failure to Appear at Protest Conference

If a protestor, without good cause, fails to appear at the protest conference, such failure will be deemed a withdrawal of the protest and the Superintendent shall dismiss the protest and such dismissal shall be final and conclusive.

XV. Conduct of Protest Conference

So as to encourage the amicable resolution of a protest, the protest conference is informal and no witnesses are examined. However, if there is anyone that a party believes can provide pertinent input, the party may have that person present to be interviewed at the conclusion of the conference and before a decision is made.

The protestor has the burden of proving that the specifications, bidding, or award of the contract was in error and merits the relief requested.

The Superintendent shall have the authority to maintain the decorum of the conference and shall take reasonable steps to do so when necessary, including clearing the conference room of any person who is disruptive.

XVI. Decision Upon Completion of Protest Process

The Superintendent shall, within a reasonable time after the conclusion of the protest process, prepare a written decision. A copy of such decision shall be sent by personal delivery or by certified United States Mail, postage prepaid, return receipt requested, to the protestor, any interested party, and the Foodservice Administrator. The decision of the Superintendent shall be final and conclusive unless fraudulent or unless a timely request for a review by the Board is filed.

XVII. Review by the Board

a. Right to Review

Any protestor or interested party who participated in the conference or the procuring agency aggrieved by the final decision of the Superintendent may file a written request for review by the Board.

b. Time for Filing

Requests for review by the Board shall be filed with the Board with copies of same being sent to the Superintendent, the School Nutrition Director, and any interested party who participated in the protest, by personal delivery or by certified United States Mail postage prepaid, return receipt requested, within three (3) calendar days after receipt of the decision of the Superintendent.

c. Content of Review Request

The written request for review by the Board shall contain, at minimum, the following:

1. the name and mailing address of the person filing the request for review;
2. a copy of the written protest originally filed;
3. copies of all documents which have been produced thus far in the protest proceedings;
4. a copy of the decision of the Superintendent;
5. a statement, in sufficient detail, of the facts relied upon to substantiate a claim that the decision of the Superintendent is in error; and
6. a statement of the relief requested.

d. Decision on Review

The Board shall issue a final written decision within a reasonable time after the final date for filing all documents to be considered on review. A copy of such decision shall be sent by certified United States Mail, postage prepaid, return receipt requested, to the party filing the request for review, the Superintendent, the Foodservice Administrator, and any interested party who participated in the protest. A determination of an issue or fact by a quorum of the Board shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

XVIII. Exhaustion of Remedies

Except as may be authorized under federal law, no protestor may file a petition for judicial review with a court of competent jurisdiction (that court being in Lee County, Mississippi) until a final written decision has been issued by the Board.

XIX. Time Limits

If a protest is not filed within the time limit set forth herein, it will be considered waived.

If a request for review by the Board is not filed within the specified time limit, it will be considered waived and the decision of the Superintendent shall be final and conclusive.

XX. Amendment of Rules, Etc.

The Board may, from time to time, amend these rules or promulgate new rules.

If any one or more of these rules is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.