

Office of the State Architect

Policy and Procedure Number 3

Protest Bond

- A. Purpose:** To provide an approved form of protest bond for use in connection with protests filed pursuant to Section 18.01E of the By-laws, Policy and Procedure of the State Building Commission, which requires that a protesting party post a bond “in form and substance acceptable to the State” in order to have its protest considered.

- B. Policy:** The form of bond attached hereto as Exhibit A has been determined to be acceptable to the State. A protesting party who provides a bond not identical in form and substance to Exhibit A does so at such party’s risk.

**EXHIBIT A
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,

(Name of Protesting Party)

(Address of Protesting Party)

as the party filing a protest of the State of Tennessee's determination(s) regarding a State Building Commission procurement process, (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 as Obligee, (hereinafter called the "Obligee"), and in the penal sum of

(Dollar Amount of Bond)

good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the Obligee has issued a procurement bearing the State Building Commission Project or Transaction Number:

(Project or Transaction Number)

AND, the Protesting Party, as an actual respondent to the solicitation, or as desiring to respond to the solicitation, claims to be aggrieved in connection with said procurement process;

AND, the signature of an attorney or the Protesting Party on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the

signer's knowledge, information, and belief formed after reasonable inquiry, it 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 interposed 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;

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 Obligee with a protest regarding the procurement process;

AND, the Obligee shall hold the protest bond for at least eight calendar days after the date of the final determination on the protest by the State Procurement Agency;

AND, if the Protesting Party appeals the State Procurement Agency's determination to the Office of the State Architect, the State Procurement Agency shall hold the protest bond until instructed by the State Architect to either keep the bond or return it to the Protesting Party.

NOW, THEREFORE, this obligation or bond shall remain in full force and effect and its penal sum shall be immediately payable to the State of Tennessee conditioned upon a decision by the State Procurement Agency, or if appealed upon a written decision by the State Architect, that:

1. The protest has been brought or pursued in bad faith; or
2. The protest does not state on its face a valid basis for protest; or
3. The Obligee suffered monetary losses based on the filing of the protest that should be recoverable as reasonably determined by the State Procurement Agency and approved by the State Architect at the full or lesser amount of the penal sum of this bond.

In which case, this obligation, either the amount in number three immediately above or the bond penal sum, shall be immediately payable to the Obligee. Otherwise, this obligation or bond shall be null and void.

IN WITNESS WHEREOF the Protesting Party has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature, and seal, 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)

(Tennessee License Number of Surety)