



State Road and Tollway Authority Policy

Policy Number:	0020	Executive Director:	Gena L. Evans
Title:	Protest Policy & Procedure	Type:	Agency-wide
Effective Date:	August 5, 2009	Employee Signature Req'd:	No
Scope:	All SRTA Employees (0) All "Interested Parties"	Owner:	Accounting

PURPOSE

The purpose of this Protest Policy and Procedure ("Policy") is to establish mandatory administrative procedures for the filing, administration and adjudication of any protest, challenge or claim against any aspect of any State Road and Tollway Authority ("SRTA") procurement, procurement process, procurement decision or contract award. This Policy is established pursuant to Article 2 of Chapter 10 of Title 32 of the Official Code of Georgia Annotated (O.C.G.A.), including, but not limited to O.C.G.A. § 32-10-63(15).

DIRECTIVE

I. Protest Procedure. This Protest Procedure ("Procedure") is the sole and exclusive administrative procedure for protests, challenges or other claims against any aspect of any SRTA procurement, procurement process or contract award.

(a) Filing

1. An Interested Party is the only party that may file a Protest under this Procedure.
2. All Protests, and any subsequent pleadings, correspondence or other communications with respect to such Protest, must be filed in writing, with a signed original and three (3) copies delivered to the Contracting Officer on a Business Day, between the hours of 9:00 a.m. and 5:00 p.m. local time, at the same address shown for filing the Solicitation Response in the Solicitation Document that is the subject of the Protest. The filing or copying of any pleadings, correspondence or other communications with respect to a Protest with any SRTA official other than the appropriate Contracting Officer shall subject the Protest to summary dismissal in accordance with Section I(e).

3. All Protests must be received by the Contracting Officer no later than 5:00 p.m. local time on the last day that such Protest may be filed with respect to a particular Solicitation Document in accordance with this Procedure. Protests may be filed only by hand delivery, U.S. mail or commercial carrier. Protests received by email or fax will not be considered.
4. Failure to timely file the Protest in accordance with Section I(a), or any supporting documents that are required to be filed as a part of the Protest under Section I(b)3., will result in the Protest being deemed untimely and subject to summary dismissal pursuant to Section I(e). Protests will be date/time stamped by the SRTA, and timeliness will be determined solely by the SRTA with reference to such date/time stamp.
5. Upon receipt of a Protest, the Protest Coordinator shall review the Protest for compliance with the procedures and requirements set forth within this Policy, the applicable Solicitation Document, and with the specific requirements set forth in Section I(b). Protests that fail to comply with any mandatory item in that Section shall subject the Protest to summary dismissal in accordance with Section I(e).
 - (i) Upon receipt of any subsequent pleadings, correspondence or other communications with respect to a Protest that are permitted by this Procedure or requested by the Protest Decisionmaker from the Protestor, the Contracting Officer will forward such materials as expeditiously as possible to the appropriate Protest Decisionmaker for the Protest.
 - (ii) Upon receipt of any subsequent pleadings, correspondence or other communications with respect to a Protest that are not permitted by this Procedure, by any other SRTA restrictions on communications, or requested by the Protest Decisionmaker from the Protestor, the Contracting Officer will forward such materials as expeditiously as possible to the appropriate Protest Coordinator for disposition under Section I(e).

(b) Form of the Protest

1. All Protests must be filed in an envelope labeled "PROTEST," which identifies the Protestor's name and address, the name of the SRTA Contracting Officer, the SRTA title assigned to the procurement, and the applicable solicitation or contract numbers.
2. Protests must be on the Protestor's letterhead and shall not exceed ten (10) pages in length (including all attachments and exhibits thereto that contain any written pleadings or argument, but excluding supporting documentation under Section I(b)3). Each page shall have print on only one side of the page with margins no smaller than one inch (1"). The font size shall be no smaller than Courier 10 characters per inch, 12 point (or equivalent).
3. Any supporting documentation that is cited or specifically referenced in the Protest, whether or not it is not already in the possession of the SRTA (except for copies of SRTA Solicitation Documents publicly posted and issued by SRTA) or Protestor, must be filed simultaneously with the Protest, if such documentation is publicly

available at the time of filing. Only supporting documentation that was not publicly available as of the deadline for filing said Protest will be accepted as a subsequent filing or pleading from Protestor and will be handled in accordance with Section I(a)5(i). All other subsequent pleadings, correspondence or other communications with respect to a Protest that are submitted by Protestor, but not first requested by the Protest Decisionmaker pursuant to Section I(h), will be handled in accordance with Section I(a)5(ii).

4. Each Protest shall contain the following mandatory information:
 - (i) Protestor's name, address, telephone number, facsimile number and e-mail address.
 - (ii) A signed and notarized affidavit of the Protestor's chief executive officer or the Protestor's legal counsel, given under oath and expressly stating that it is given under penalty of perjury, that the contents of the Protest are true and correct and that the filing of the Protest is authorized by the Protestor's chief executive officer.
 - (iii) The signature of the Protestor's chief executive officer or the Protestor's legal counsel, whichever is signing the Protest for or on behalf of the Protestor, notarized separately from, and in addition to, the notarized affidavit under Section I(b)4(ii).
 - (iv) The specific title assigned by the SRTA to the procurement and to the specific Solicitation Document that is the subject of the Protest, and all associated SRTA solicitation or contract numbers, must be clearly shown on each page of the Protest.
 - (v) A specific detailed statement of all legal and factual grounds relied upon by the Protestor in filing its Protest. Any grounds not included in the Protest that the Protestor could have raised when the Protest was filed will be deemed irrevocably waived and may not be part of, or grounds for, that or any subsequent Protest or other legal action filed by Protestor.
 - (vi) Information in the form of signed affidavits or supporting documentation sufficient to show that the Protestor qualifies as an Interested Party for the procurement with respect to which such Protest is filed.
 - (vii) Evidence that the filing of the Protest is timely along with all supporting documentation.
 - (viii) A specific statement of the form and nature of the relief requested by Protestor.
5. The Protest Coordinator will conduct a procedural compliance review to determine whether the Protest fails to comply with the mandatory items in Section I(b). The Protestor's failure to include in its Protest all of the mandatory items specified in

Section I(b) shall subject the Protest to summary dismissal in accordance with Section I(e).

(c) Time for Filing

1. Protestors challenging any aspect of a particular procurement with respect to any matter or event first occurring on or before the Solicitation Response Date of a particular Solicitation Document, including, without limitation, any aspect of such particular Solicitation Document, shall file their Protest within ten (10) Calendar Days of when the basis for the Protest is known or should have been known to Protestor (whichever is earlier) but in no event later than the Solicitation Response Date for such Solicitation Document. Any Protest by the Protestor with respect to any matter or event first occurring on or before the Solicitation Response Date, including any aspect of the procurement process or the Solicitation Documents issued or occurring prior thereto, must be made within the time frame set forth in Section I(c)1 or will be deemed irrevocably waived and may not be part of, or grounds for, any subsequent Protest or other legal action filed by Protestor. For purposes of this Procedure, Interested Parties shall be deemed to have knowledge of the form and contents of any Solicitation Document at the time that such Solicitation Document is first posted to the Georgia Procurement Registry website or otherwise put on public notice in accordance with the written policies of the SRTA.
2. Protestors challenging any aspect of a particular procurement with respect to any matter or event first occurring after the Solicitation Response Date with respect to the particular Solicitation Document and on or prior to the Solicitation Decision Date with respect to such Solicitation Document, including the Contract Award or any other decision issued by the SRTA with respect to such procurement during such period of time, shall file their Protest within ten (10) Calendar Days of when the basis for the Protest is known or should have been known to Protestor (whichever is earlier) but in no event later than ten (10) Calendar Days after the Solicitation Decision Date. Any Protest by the Protestor with respect to any matter or event first occurring after the Solicitation Response Date with respect to the particular Solicitation Document and on or prior to the Solicitation Decision Date with respect to such Solicitation Document, including any aspect of the procurement process occurring during such period of time in the procurement with respect to which the Protest is filed, must be made within the time frame set forth in Section I(c)2 or will be deemed irrevocably waived and may not be part of, or grounds for, any subsequent Protest or legal action filed by Protestor.
3. Protests not filed in accordance with the deadlines set forth in Section I(c) shall be deemed untimely and subject to summary dismissal pursuant to Section I(e).

(d) Protest Decisionmaker

1. Except as specifically set forth in this paragraph and in Section I(d)2, all Protests shall be decided by the SRTA Procurement Director who is authorized by the Executive Director to resolve or rule on any Protest. The Procurement Director's actions, decisions and orders in such capacity as Protest Decisionmaker shall be deemed to be on behalf of the Executive Director and effective as though taken by the

Executive Director. If at the time of filing, SRTA does not have a Procurement Director then the Executive Director may designate, in their discretion, any other SRTA employee (other than the Executive Director, or the Protest Coordinator or Contracting Officer for the particular procurement that is the subject of the Protest) to serve as Protest Decisionmaker until a Procurement Director is appointed or on a case by case basis at any time after receipt of a Protest and prior to the appointment of a Third Party Hearing Officer with respect to such Protest under Section I(d)2.

2. At the sole and exclusive discretion of the Procurement Director exercised at any time prior to the issuance of a decision with respect to a Protest, the Procurement Director may request that the Executive Director appoint a Third Party Hearing Officer to recommend a resolution or ruling on any Protest in accordance with Section I(i)4. Upon such appointment of a Third Party Hearing Officer by the Executive Director, the Third Party Hearing Officer's actions, decisions and orders in such capacity as Protest Decisionmaker shall be deemed to be on behalf of the Executive Director and effective as though taken by the Executive Director, subject, however, to Section I(i)4. Upon the request for and appointment of a Third Party Hearing Officer with respect to a particular Protest, such appointment of a Third Party Hearing Officer with respect to such Protest shall be irrevocable and the Procurement Director shall not thereafter be entitled to rule singly on the Protest.

(e) **Summary Dismissal:** The Protest Coordinator, at any time prior to forwarding the Protest to the Protest Decisionmaker, or the Protest Decisionmaker at any time thereafter, may, in their sole discretion, summarily dismiss any Protest failing to comply with any aspect of this Procedure or any aspect of the applicable Solicitation Documents issued by the SRTA. Protester will be notified in writing by facsimile transmission or electronic means, with the original to follow by United States Mail, of the summary dismissal of its Protest.

(f) **Reserved.**

(g) **Time for Decision by Protest Decisionmaker:** Protests that are not either summarily dismissed or withdrawn (or deemed withdrawn) shall be forwarded by the Protest Coordinator to the Protest Decisionmaker for a decision, as expeditiously as possible after the end of the Protest Coordinator's procedural compliance review. The Protest Decisionmaker shall issue a decision as expeditiously as practical within Thirty (30) Business Days from the later to occur of:

1. The day the Protest is forwarded by the Protest Coordinator to the Protest Decisionmaker for a decision, or
2. The receipt of any requested information from the Contracting Officer, the Protestor or any other party who has relevant information that the Protest Decisionmaker deems necessary in order to render its decision on the Protest.

(h) **Protest Decisionmaker's Investigation**

1. The Protest Decisionmaker may request or permit submission of additional statements or documentation from the Contracting Officer, as the Protest Decisionmaker deems necessary in its sole discretion.

2. The Protest Decisionmaker may make a reasonable investigation and is authorized to request any information or documentation it deems necessary in order to render a decision on the Protest.

(i) Protest Adjudication Procedures

1. The Protest Decisionmaker, in its sole discretion, may issue written questions to the Protestor on any issue the Protest Decisionmaker deems necessary for its consideration of the Protest. Such written questions may be issued in lieu of or in addition to a hearing. Unless specifically required or permitted by this Procedure, or otherwise specifically requested by the Protest Decisionmaker in writing to the Protester, the Protester may not file any written pleading, motion or other written documentation with the Contracting Officer or the Protest Decisionmaker after Protester's filing of the initial Protest.
2. The Protest Decisionmaker, in its sole discretion, either at the Protest Decisionmaker's own instance or upon the Protestor's prior written request submitted in accordance with I(a)2, may elect to conduct a hearing in connection with the Protest. Any requests for a hearing must include a brief statement demonstrating that the Protest Decisionmaker's decision will be aided by a hearing. In the event that the Protest Decisionmaker schedules a hearing, the notice of the hearing may set forth the scope of the hearing, including, but not limited to, the issues to be addressed, the length of hearing and whether documentary or testimonial evidence will be accepted. Alternatively, the Protest Decisionmaker may conduct a pre-hearing conference concerning the procedures to be followed at the hearing, what issues are under consideration and a list of witnesses who may testify. The issues and evidence considered by the Protest Decisionmaker are within the sole discretion of the Protest Decisionmaker.
3. Subject to Section I(i)4, the Protest Decisionmaker may fashion any remedy the Protest Decisionmaker deems consistent with the procurement process and the Solicitation Documents, including without limitation,
 - (i) Deny the Protest in whole or in part,
 - (ii) Sustain the Protest in whole or in part, or
 - (iii) Subject to Section I(i)4, order the Contracting Officer to take any measure consistent with the Protest Decisionmaker's remedy, including without limitation,
 - (I) Award the contract in accordance with the Contracting Officer's original decision,
 - (II) Suspend Contract Award or other Solicitation Decision and reevaluate the Solicitation Responses,
 - (III) Cancel the procurement or solicitation,

- (IV) Amend the procurement, or
 - (V) Any other remedy the Protest Decisionmaker determines is necessary to protect or maintain the integrity of the SRTA's procurement process.
4. The decision of the Protest Decisionmaker shall be final; provided, however, that if a Third Party Hearing Officer is the Protest Decisionmaker, the Third Party Hearing Officer shall only be entitled to make a written recommendation to the Executive Director containing the Third Party Hearing Officer's proposed ruling on the Protest.
- (i) The Executive Director may:
 - (I) Accept, modify or reject the Third Party Hearing Officer's recommendation in whole or in part,
 - (II) Return the matter to the Third Party Hearing Officer with instruction, or
 - (III) Make any other appropriate disposition.
 - (ii) The Executive Director's decision shall be deemed the final decision of the Protest Decisionmaker.
- (j) **Stay of Procurement During Protest:** The Executive Director may order a stay in the opening of a Solicitation Response or of the contract performance if the Executive Director determines, in the Executive Director's sole discretion, that a stay is in the best interest of the SRTA, any affected Agency or the State of Georgia. Should the Executive Director not stay contract performance pending the resolution of any Protest to an actual Contract Award, the contract may be awarded on a contingent basis, subject to revocation, revision or other adjustment or modification based on the final decision of the Protest Decisionmaker in such Protest.
- (k) **Costs:** Neither the Protestor, any Interested Party nor any other third party shall be entitled to recover any costs incurred in connection with the procurement process, the solicitation, the Protest, and/or compliance or attempted compliance with this Policy, including preparation costs or attorneys' fees.
- (l) **Governing Law:** The laws and regulations of the State of Georgia, without application of its conflicts of laws principles, shall govern any action brought pursuant to this Procedure.
- (m) **Judicial Review:** Any further legal action by the Protestor upon the final decision by SRTA must be filed with the Superior Court of Fulton County and served on SRTA within the time prescribed by Georgia law. The final exhaustion of the procedures set forth in this Policy is a prerequisite to the commencement of any judicial review of a final decision issued by SRTA under this Policy.

DEFINITIONS

Business Day. Any day other than Saturday, Sunday or a day that is designated a public and legal holiday in the State of Georgia under O.C.G.A. Section 1-4-1.

Calendar Day. Any day of the week; however, if a deadline specified under this Policy falls on a Saturday, Sunday or a day that is designated a public and legal holiday in the State of Georgia under O.C.G.A. Section 1-4-1, then the deadline shall be extended to the next Business Day.

Contract Award. SRTA's written notice of award of a contract to the successful Respondent in a particular SRTA procurement.

Contracting Officer. The SRTA official authorized to manage a particular SRTA procurement and to issue a Contract Award with respect thereto, as set forth in the applicable Solicitation Documents for such procurement.

Interested Party. For purposes of this Policy, an *Interested Party* is defined as:

1. With respect to any Protest filed on or before the Solicitation Response Date, any party with a direct economic interest in providing the goods or services sought in the procurement that is the subject of Solicitation Document in question, or
2. With respect to any Protest filed after the Solicitation Response Date, only those Respondents who actually filed a timely and responsive Solicitation Response that complies with the Solicitation Document in question.

Procurement. The acquisition of goods and/or services.

Procurement Director. The SRTA official designated by the Executive Director who supervises the procurement activities of the SRTA and to whom the Contracting Officer reports.

Protest. Any protest, challenge or other claim, howsoever designated, to any aspect of a SRTA procurement. Neither the Executive Director's appointment of another SRTA official as the Protest Decisionmaker, nor the Executive Director's appointment of a Third Party Hearing Officer, shall be a basis for a Protest.

Protest Coordinator. The SRTA Contracting Officer for the particular procurement that is the subject of the Protest. However, the Executive Director may request that another SRTA employee (other than the Protest Decisionmaker) serve as the Protest Coordinator where, in the Executive Director's sole discretion, he or she determines that circumstances warrant such an action. The Protest Coordinator will be authorized to carry out the following duties with respect to a Protest:

1. Manage the submission of the Protest to the Protest Decisionmaker;
2. Evaluate compliance with this Procedure;

3. Issue summary dismissals in accordance with Section I(e);
4. When necessary, request that the Executive Director appoint additional staff to assist the Protest Coordinator in performing the duties set forth herein, and
5. Any other authority delegated from time to time by the Executive Director.

Protest Decisionmaker. With respect to each Protest, the person or entity authorized to hear, resolve or rule on that Protest, which may be the SRTA Procurement Director, a SRTA employee appointed by the Executive Director, or a Third Party Hearing Officer as the case may be.

Protestor. An Interested Party who files a timely Protest in accordance with the SRTA Protest Procedure.

Respondent. An Interested Party that properly returns a Solicitation Response to a Solicitation Document, in accordance with the criteria set forth in such Solicitation Document.

Solicitation Document. Any written or electronic IFB, ITB, RFQ, RFQC, RFP, Solution-Based Solicitation, Government-Vendor Partnership, Request for Information (RFI) document or other acquisition documents expressly used by SRTA to invite offers or request information regarding the acquisition of goods and/or services.

Solicitation Decision. With respect to each Solicitation Document issued in connection with a particular SRTA procurement, the SRTA decision or award with respect to such SRTA Solicitation Document.

Solicitation Decision Date. With respect to each Solicitation Document issued in connection with a particular SRTA procurement, the date the SRTA issues its Solicitation Decision with respect to such SRTA Solicitation Document.

Solicitation Response. The document submitted by a Respondent as a bid, response, offer or proposal in response to a Solicitation Document.

Solicitation Response Date. With respect to each Solicitation Document issued in connection with a particular SRTA procurement, the date designated by the SRTA for filing the Solicitation Response with the Contracting Officer, as set forth in the applicable Solicitation Document for such procurement.

SRTA. The State Road and Tollway Authority established pursuant to O.C.G.A. § 32-10-60 *et seq.*

Third Party Hearing Officer. For purposes of this Policy, a *Third Party Hearing Officer* is an individual who is neither employed by nor affiliated with the SRTA, an Interested Party or any Agency involved in the particular SRTA procurement that is the subject of the Protest and who, if appointed in accordance with Section I(d)3, will be authorized by the Executive Director to recommend a resolution or ruling on a Protest in lieu of the Agency Protest Decisionmaker acting singly.

REVISION HISTORY

<i>Revision Number</i>	<i>Date</i>	<i>Policy Owner</i>	<i>Executive Director</i>
Original	July 1, 2007	Accounting	Rosa Rountree
1	August 5, 2009	Accounting	Gena L. Evans

REFERENCES

The following documents are referenced in the policy:

<i>Document Name</i>	<i>Details</i>

APPROVALS

Teresa Slack *8/5/09*
 Teresa Slack Date
 Chief Operating Officer

Gena L. Evans *8/5/09*
 Gena L. Evans Date
 Executive Director