



STATE PROPERTIES COMMISSION

47 Trinity Avenue, S.W., Suite G02 Atlanta, Georgia 30334

POLICY

TITLE: SPC 10 – Transaction Management: Protest Policy

ADOPTED: May 9, 2013

REVISED:

1. Definitions

- (a) Executive Director: The Executive Director of SPC, or his or her designee.
- (b) Interested Party: A person or entity that proposes to provide administrative space to SPC, or bids to acquire real property from SPC pursuant to a request for proposals or an invitation for bids.
- (c) Contract: Any agreement whereby SPC agrees to rent or lease administrative space or sell real property to an Interested Party pursuant to a request for proposals or an invitation for bids.
- (d) Board: The governing board of the State Properties Commission.

2. 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 the State Properties Commission’s (“SPC”) competitive solicitation and selection process for administrative space, invitations to bid for the acquisition of real property, or contract award.

3. Policy Statement

- (a) Applicability of Policy: This Policy shall apply to and govern all disputes, complaints and protests of any kind, whether at law or in equity, arising out of or relating to a solicitation for a Contract, and a decision to award a Contract.
- (b) Filing of a Protest: Any Interested Party may protest a solicitation or the proposed award of a Contract to another Interested Party or SPC's decision to award a Contract to another Interested Party. The protest shall be in writing, shall be filed with the Executive Director at the SPC Office and shall include the following information:
 - (i) The name, address and telephone number of the protesting Interested Party;

- (ii) The signature of the protesting Interested Party or its authorized representative;
 - (iii) Identification of the solicitation or contract number;
 - (iv) A statement of the legal and factual grounds surrounding the protest, including copies of all relevant supporting documentation; and
 - (v) The specific form of relief requested.
- (c) Time for filing protest concerning a Contract.
- (i) Protests concerning a solicitation:
 - Protests based upon a solicitation that are apparent before the closing date for receipt of initial proposals or bids shall be filed no later than five (5) days before the closing date for receipt of initial proposals or bid opening. Protests based upon an amendment to any solicitation, or upon any additional information requested or accepted by SPC with respect to any solicitation or response thereto, that are apparent before the closing date for receipt of proposals or bids shall be filed no later than five (5) days before the closing date for receipt of such proposals or bids.
 - If a protest is filed with the Executive Director before the award of a Contract, the award of such Contract or the posting of a notice of intent to award such contract may be made before a decision is rendered on the protest.
 - (ii) Protests concerning a decision to award a Contract:
 - Any Interested Party may protest SPC's decision to award a Contract. The written protest shall be filed within seventy-two (72) hours after the announcement of either the Executive Director or Board's decision to award is posted or published, whichever occurs first.
 - If the protest depends upon information contained in public records pertaining to the award, then the seventy-two (72) hour time limit for a protest begins to run after the records are made available to the Interested Party for inspection, so long as the Interested Party's request to inspect the records is made within seventy-two (72) hours after the award is posted or published, whichever occurs first.
 - If a protest is filed with the Executive Director before the award of a Contract, the award of such Contract may be made before a decision is rendered on the protest.

In the event a protest is filed, the Executive Director shall immediately give notice of the protest to the Board and to the successful Interested Party, if an award has been made, or, if no award has been made, to all applicable Interested Parties.

- (d) Confidential Information: SPC shall, upon written request, make available to any Interested Party, information submitted that bears on the substance of any protest except where said information is permitted or required to be withheld by law.

Material submitted by a protesting Interested Party shall not be withheld from any Interested Party except to the extent that the withholding of information is permitted or required by law. If the protesting Interested Party believes the protest contains material that should be withheld, a statement advising the Executive Director of this fact shall accompany the protest submission.

- (e) Decision by the Executive Director: The Executive Director shall have the exclusive authority to decide all protests. The Executive Director shall issue a written decision within thirty (30) days after a protest has been filed and shall mail the decision to the protesting Interested Party by certified mail, return receipt requested. The time limit for decisions may be extended by the Executive Director for a reasonable time not to exceed thirty (30) days. The Executive Director shall notify the protesting Interested Party in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- (f) Exclusive Remedy: These rules and regulations shall provide the exclusive procedure for asserting a claim against SPC arising out of or relating to any competitive solicitation and selection process for a Contract conducted by SPC.
- (g) Hearing Procedures: Any Interested Party or other party in interest that desires a hearing before the Executive Director regarding any protest, dispute or other claim or controversy brought pursuant to this Policy must make a written request for such a hearing within five (5) days from the date a protest is filed with SPC. All hearings conducted under this Policy shall be conducted by the Executive Director or by a hearing officer designated by the Executive Director. The hearing officer's actions, decisions and orders shall be deemed to be on behalf of the Executive Director and effective as though taken by the Executive Director. A hearing shall be held within thirty (30) days following receipt of any request for a hearing. A notice which sets forth the time, date and location of the hearing shall be mailed to the party or parties requesting such hearing at least seven (7) days before the date set for such hearing. In connection with the hearing, the Executive Director and the hearing officer may:
- (i) conduct the hearing in an informal manner without formal rules of evidence or procedure;
 - (ii) hold pre-hearing conferences to:
 - settle, simplify or identify the issues involved in the hearing;
 - consider other matters that may aid in the expeditious disposition of the hearing;
 - (iii) require each complaining party to state, either orally or in writing, its position concerning the various issues involved in the hearing;
 - (iv) require each complaining party to produce for examination those relevant witnesses and documents under its control;

- (v) rule on motions and other procedural items pending before him or her, including, without limitation, the methods, scope and extent of discovery available to the complaining party;
- (vi) regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;
- (vii) establish time limits for submission of motions or memoranda;
- (viii) take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice;
- (ix) administer oaths or affirmations; and
- (x) issue subpoenas.

Any complaining party may request that the hearing be conducted before a court reporter. Such request must be in writing and include an agreement by the requesting party that it shall pay for, or that it shall procure at its own cost and on its own initiative, the court reporting services for such hearing. To be made part of the record, the original transcript of any such proceedings shall be submitted to the Executive Director or the hearing officer as soon as the transcript is available.

If the Executive Director conducts the hearing, he or she must render a decision in writing and send by certified mail, return receipt requested, or hand deliver the decision to the parties within thirty (30) days after the conclusion of such hearing, or within thirty (30) days after receiving an original transcript of the hearing, if applicable. If a hearing officer conducts the hearing, he or she must provide a recommendation (“Recommendation”) to the Executive Director within thirty (30) days after the conclusion of the hearing, or within thirty (30) days after receiving an original transcript of the hearing, if applicable. If a Recommendation is received by the Executive Director, he or she must render a decision in writing and deliver or mail the decision to the parties within thirty (30) days after receiving the Recommendation from the hearing officer. The Executive Director may accept the Recommendation in whole or in part or may reject the Recommendation and enter his or her own decision.

The Executive Director's written decision shall be sent by certified mail, return receipt requested, or hand delivered to all complaining parties. Any applicable party is presumed to have received such decision from SPC no later than the third business day following the date such decision was mailed to the last known address of such party.

- (h) Judicial review: A final decision of the Executive Director shall be subject to judicial review by any person or entity who was a party to the protest, and the action seeking review must be filed with the Superior Court of Fulton County and served on SPC within the time prescribed by Georgia law. The exhaustion of this Policy is a prerequisite to the commencement of an action seeking review.