

AVIATION AUTHORITY POLICY

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| 500: LEGAL | Effective: 08/01/02 |
| LITIGATION & DISPUTES | Revised: 03/04/04 06/01/23 |
| P512: Procurement Protests | 11/03/11 <u>08/03/23</u> |
| | 12/20/12 |
| | 01/24/13 |
| | 10/01/15 |
| | 11/16/17 |
| | 09/08/22 |

PURPOSE: To establish a policy for procurement protests.

LEGAL CONSIDERATION: Section 6(1)(c) of the Hillsborough County Aviation Authority Act (Act) grants the Authority the power to exclusively control, supervise, and manage airports in Hillsborough County and each municipality, except any airport owned, controlled, or operated by a private person. Sections 6(2)(vv) and (xx) of the Act grant the Authority the power to transact business and exercise all legally permissible powers, and perform acts necessary for the general welfare of the Authority. The Authority is not an agency within the meaning of Section 120.52(1), Florida Statutes, and is therefore not subject to the provisions of the Administrative Procedure Act, Chapter 120, Florida Statutes.

POLICY:

A. Definitions

1. Authority Business Day shall mean 8:00 a.m. to 5:00 p.m., ET, Monday through Friday, with the exception of Authority holidays.
2. Competitive Selection Process shall mean selections made pursuant to a process such as a request for proposals (RFP), request for qualifications (RFQ), invitation to bid (ITB), invitation to negotiate (ITN), reverse auction (RA), and the Consultants' Competitive Negotiation Act (CCNA) that will exceed \$~~10065~~,000.
3. Delivery Point shall mean the physical address and email address used for delivery of protest documents:
 - a. Email: vpofprocurement@tampaairport.com

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- b. Physical address:
Hillsborough County Aviation Authority
Tampa International Airport
HCAA SkyCenter One
5411 SkyCenter Drive
Suite 500 Tampa, Florida 33607
Attn: Vice President of Procurement
- 4. Formal Protest shall mean a written protest that challenges the results or impending decision of any Authority Competitive Selection Process.
- 5. Informal Selection Process shall mean selections made pursuant to an invitation to quote (ITQ) or other Competitive Selection Process that will not exceed ~~\$10065~~,000.
- 6. Intervening Party shall mean a Respondent other than the Protesting Respondent who will be directly affected by the resolution of the protest.
- 7. Notice of Intent to Select/Award shall mean the document that is posted on the Authority website with the Formal Solicitation document that lists the Respondent(s) that will be recommended for award of a contract and the date that the recommendation or award will be presented to the Authority's Board.
- 8. Protesting Respondent shall mean a Respondent that is protesting the results or impending decision regarding a Competitive Selection Process or an Informal Selection Process for which the Respondent submitted a response. Standing to protest is limited to Respondents who meet the requirements of legal standing.
- 9. Respondent shall mean an individual, firm or entity that has submitted a response to a Competitive Selection Process or Informal Selection Process.
- 10. Summary Protest shall mean a written protest that challenges the results or impending decision of any Authority Informal Selection Process.

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B. Formal Protests

1. General

- a. Respondents have the right to file a Formal Protest of the results of any Authority Competitive Selection Process ~~that will exceed \$65,000.~~
- b. No Formal Protest may challenge the chosen procurement method, the evaluation criteria, the relative weight of the evaluation criteria or the formula specified for assigning points in any Competitive Selection Process.
- c. Minimum Qualifications: Prior to filing a Formal Protest under this Policy with regard to a minimum qualifications and responsiveness/responsibility determination, Respondent shall attempt to resolve any disputes with the appropriate procurement agent or designee within three (3) Authority Business Days after the Authority posts the Minimum Qualifications and Responsiveness/Responsibility Determination Notice on the Authority website.
- d. Notice of Intent to Select/Award: Prior to filing a Formal Protest under this Policy with regard to a notice of intent to select/award, Respondent shall attempt to resolve any disputes with the appropriate procurement agent or designee within three (3) Authority Business Days after the Authority posts the Notice of Intent to Select/Award on the Authority website.
- e. All dates, timeframes and deadlines will be calculated as Authority Business Days. In all instances any document required to be transmitted by a certain date must be received in the required office by 5:00 p.m., ET, unless otherwise stated in this Policy. Postmark by the required date is not sufficient. Transmittal by email or other electronic means will be accepted. However, it will be the responsibility of the party transmitting the

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document(s) to ensure that the document(s) were received by the Authority, and the transmitting party will bear any risk of an interruption or failure in transmission of such documents.

- f. Formal Protests must be filed with and received by the Vice President of Procurement or designee no later than 1:00 p.m., ET, five (5) Authority Business Days after the Authority posts the Minimum Qualifications and Responsiveness/Responsibility Determination Notice or Notice of Intent to Select/Award, as the case may be, on the Authority website. Formal Protests received after this timeframe will not be considered.
- g. During any Formal Protest, including any appeal thereof, no contact with Authority Board members, officers or employees, other than the procurement agent identified in the solicitation or designee, the Vice President of Procurement or designee and the Authority’s Legal Affairs Department, is permitted from any Respondent. Such communication will result in an automatic denial of the Formal Protest and disqualification from selection for the pending solicitation.
- h. Any Notice of Formal Protest, Intervening Party documentation, and/or appeal received by the Authority will be posted on the Authority website on the date received by the Vice President of Procurement or designee. The Protesting Respondent and any Intervening Party shall bear the responsibility of monitoring the Authority website.
- i. A Protesting Respondent or Intervening Party may be represented by legal counsel at their own expense.
- j. The Authority reserves the right to extend any timeframe listed in this Policy.
- k. All Competitive Selection Process documents will set forth the following statement:

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“Failure to follow the procurement protest policy set out in the Hillsborough County Aviation Authority’s policies constitutes a waiver of your protest and resulting claims. A copy of the procurement protest policy may be obtained by contacting the Authority via telephone at 813-870-8700 or via mail to Hillsborough County Aviation Authority, Post Office Box 22287, Tampa, Florida 33622. The policy is also available on the Authority’s website (www.tampaairport.com).”

1. Failure to follow the requirements of this Policy shall be just cause for rejection of the Formal Protest.
 - m. The Vice President of Procurement may designate a Director of Procurement to act on his behalf for any matters related to this Policy.
2. Required Form of Formal Protest
 - a. All Formal Protests must state that the Protesting Respondent is submitting a Notice of Formal Protest.
 - b. Delivery of the Formal Protest by certified or registered mail, return receipt required, email, or hand delivery to the Vice President of Procurement or designee is required.
 - c. Formal Protests will be date and time stamped upon receipt and, if hand-delivered, a receipt will be issued to the Protesting Respondent stating the date and time the Formal Protest was received.
 - d. Once filed and received by the Authority, the Formal Protest may not be supplemented by the Protesting Respondent. However, the Authority has the right to seek clarification and additional information as needed.
 - e. The Notice of Formal Protest must include the following information:

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- i. The name, postal and email addresses, and telephone number of the Protesting Respondent;
- ii. Authority solicitation title and number or contract title, as applicable;
- iii. A concise statement indicating the grounds and evidence, including facts, rules, regulations, statutes and constitutional provisions, the factual and legal basis, upon which the Formal Protest is based, with the inclusion of all supporting documentation. The Protesting Respondent waives its rights and remedies related to any grounds not specifically stated in writing;
- iv. A statement of the specific ruling or relief requested; and
- v. Signature of the Protesting Respondent or an authorized agent of the Protesting Respondent.

3. Intervening Parties

- a. Intervening Parties shall have the right to intervene in a Formal Protest by filing written documentation related to the protested solicitation with the Vice President of Procurement or designee no later than 1:00 p.m., ET, five (5) Authority Business Days after the Authority posts the Formal Protest on the Authority website. Documentation received after this timeframe will not be considered.
- b. Intervening Parties shall bear the responsibility of determining whether a Formal Protest has been filed with the Authority.
- c. Delivery by certified or registered mail, return receipt required, email, or hand delivery to the Vice President of Procurement or designee is required.

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- d. Intervening Party submissions will be date and time stamped upon receipt and, if hand delivered, a receipt will be issued to the Intervening Party stating the date and time the submission was received.
 - e. An Intervening Party shall bear all costs of its submissions to the Authority.
 - f. Intervening Party submissions must include the following information:
 - i. The name, postal and email address, and telephone number of the Intervening Party;
 - ii. Authority solicitation title and number or contract title, as applicable;
 - iii. A concise statement indicating the grounds and evidence, including facts, rules, regulations statutes and constitutional provisions, upon which the intervention is based, with inclusion of all supporting documentation;
 - iv. A specific statement indicating the Intervening Party’s position with respect to the Formal Protest;
 - v. A statement of the specific ruling or relief requested; and
 - vi. Signature by an authorized agent of the Intervening Party.
4. Determination of Formal Protest
- a. When a Notice of Formal Protest is received, the Vice President of Procurement or designee will serve as the Review Officer to evaluate the submissions, including the Notice of Formal Protest, the documentation from any Intervening Party, and other documentation related to the

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protested solicitation provided to the Vice President of Procurement or designee.

- b. The decision by the Review Officer will be based on written submissions only.
- c. The Review Officer will issue a written decision to uphold or reject the Formal Protest and the basis therefor within seven (7) Authority Business Days after receipt of the Notice of Formal Protest.

5. Appeal of Formal Protest Decision

- a. Following the Review Officer’s decision of the Formal Protest, any adversely affected Protesting Respondent may file a request for appeal with the Vice President of Procurement or designee no later than 1:00 p.m., ET, three (3) Authority Business Days after the Authority posts the decision of the Review Officer on the Authority website. Appeals received after this timeframe will not be considered.
- b. The request for appeal must state that the Protesting Respondent is submitting an appeal of the Review Officer’s decision.
- c. Failure to follow the requirements of this Policy will be just cause for rejection of the appeal.
- d. Delivery by certified or registered mail, return receipt required, email, or hand delivery to the Vice President of Procurement or designee is required.
- e. Appeals will be date and time stamped upon receipt and, if hand-delivered, a receipt will be issued to the appealing party stating the date and time the appeal was received.
- f. An appealing party may be represented by legal counsel at its own expense.

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- g. Once filed and received by the Authority, the appeal may not be supplemented. However, the Authority has the right to seek clarification and additional information as needed.
- h. The appeal must include the following information:
 - i. The name, postal and email addresses, and telephone number of the party filing the appeal;
 - ii. Authority solicitation title and number or contract title, as applicable;
 - iii. A concise statement indicating the grounds and evidence, including facts, rules, regulations, statutes and constitutional provisions, the factual and legal basis, upon which the appeal is based, with the inclusion of all supporting documentation. New grounds or evidence not previously set forth in the Formal Protest will not be considered;
 - iv. A statement of the specific ruling or relief requested; and
 - v. Signature of the party filing the appeal or an authorized agent of the party filing the appeal.
- i. Upon the filing of the appeal, the appealing party shall post with the Vice President of Procurement or designee a security in the form of a bond (in a form and with such terms as approved by the Vice President of Procurement or designee) payable to the Hillsborough County Aviation Authority in the amount of \$50,000. The surety issuing the bond must be authorized to do business in the State of Florida and be in compliance with the Florida Insurance Code. Any bond submitted shall have a duly executed power of attorney attached. In lieu of a bond, the Authority may accept an irrevocable letter of credit, cashier's or certified check, or money order in the

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aforementioned amount (in a form and with such terms as approved by the Vice President of Procurement or designee). Noncompliance with this requirement, in whole or in part, will be deemed to be a waiver of the right to appeal. Said security shall be designated and held for the payment of any costs that may be levied against the appealing party. If the appeal is successful, the posted security will be refunded in full.

6. Notice of Hearing Date and Hearing
 - a. Following the filing of a party’s appeal, the Authority will set a hearing date not more than ten (10) Authority Business Days from the date of receipt of the request for appeal. The Authority shall post the notice of the hearing date, time and location on the Authority website and advertise such notice in a local newspaper. The hearing will be open to the public.
 - b. The Procurement Appeals Hearing Officer shall conduct a de novo review limited to the records that were produced and submitted to the Review Officer. New information will not be introduced. The burden of proof shall rest with the appealing party. The standard of proof shall be whether the decision by the Review Officer was clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without basis in fact or law. Any decision of the Procurement Appeals Hearing Officer will be based on substantial competent evidence. The hearing shall begin with a statement by the Procurement Appeals Hearing Officer of the rules and procedures for the hearing. The Procurement Appeals Hearing Officer shall place all non-attorney parties who intend to participate in the hearing under oath. Next, the Authority Vice President of Procurement or designee shall provide a general statement of the facts. Representatives of the appealing party, limited to its owners, officers, employees and/or legal counsel, will then be required to present the appealing party’s case. Any Respondents other than the appealing party who have standing and will be directly affected by the resolution of the appeal (limited to owners, officers, employees and/or legal counsel) will next be given an opportunity to be heard and to present

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information. Following that will be a statement and presentation of information from the Vice President of Procurement or designee and Authority legal counsel, as needed. Party presentations shall be limited to two (2) hours per party. All examinations and cross-examinations shall be conducted by the Procurement Appeals Hearing Officer. All parties shall be provided a fair and impartial hearing. Strict rules of evidence shall not apply. Hearsay evidence may be admissible and used to supplement or explain other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in a civil action. At the hearing, the Authority shall present evidence of the costs incurred by the Authority in convening the hearing including the costs and fees of the Procurement Appeals Hearing Officer.

- c. **Decision and Notice of Decision.** The Procurement Appeals Hearing Officer shall, within seven (7) Authority Business Days of the hearing, make a written decision on the appeal, which decision shall contain findings of fact, conclusions of law, and will affirm or deny the decision by the Review Officer. The decision shall be sent by the Procurement Appeals Hearing Officer to all parties by registered mail and shall set forth the reasons for the decision.

- d. **Recovery of costs by the Authority.** If the Authority prevails, the Procurement Appeals Hearing Officer shall assess against the appealing party reasonable costs incurred by the Authority in convening the hearing, including the costs and fees for the Procurement Appeals Hearing Officer. Such assessment will be set forth in the written decision. Costs of the hearing assessed against the appealing party shall be paid to the Authority within five (5) Authority Business Days after receipt by the appealing party of the decision of the Procurement Appeals Hearing Officer. Any costs not fully discharged by the amount of the appealing party's bond shall be paid by the appealing party. Failure to timely pay said costs shall result in the appealing party being suspended from competing for any other contract with the Authority until such payment is made in full.

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7. Formal Protest Remedies

- a. If a Formal Protest is upheld, the relief granted may be one or more of the following:
 - i. Cancel the solicitation and/or contract.
 - ii. Award in part.
 - iii. Re-compete the procurement.
- b. In no event will a contract be automatically awarded to a Protesting Respondent if the protest is upheld or to an appealing party if an appeal is granted. Nothing herein shall prevent the Authority, at its sole discretion, from providing for an alternative remedy which is in the best interest of the Authority and in compliance with any applicable law.

8. Formal Protest Final Decision

Decisions of the Procurement Appeals Hearing Officer are final and subject to appeal by appropriate court action under Rule 9.100(c) of the Florida Rules of Appellate Procedure, or in some instances by proceedings before federal administrative agencies, in accordance with applicable law. No new facts or issues will be considered by the reviewing court or agency. By participating in the procurement process, the Protesting Respondent and any Intervening Parties acknowledge that any appeal to any court must be filed no later than 30 calendar days following the written decision of the Procurement Appeals Hearing Officer.

C. Summary Protests

1. General

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- a. Respondents have the right to file a Summary Protest of the results of any Authority Informal Selection Process.
- b. No Summary Protest may challenge the chosen procurement method, the evaluation criteria, the relative weight of the evaluation criteria or the formula specified for assigning points in any Informal Selection Process.
- c. Prior to filing a Summary Protest under this Policy, Respondent shall attempt to resolve any disputes with the appropriate procurement agent or designee no later than two (2) Authority Business Days following the submission deadline (date and time) as specified in the Informal Solicitation document. Respondent shall bear the responsibility of determining whether the Authority has made a decision of intent to select a Respondent or award a contract or purchase order.
- d. All dates, timeframes and deadlines will be calculated as Authority Business Days. In all instances any document required to be transmitted by a certain date must be received in the required office by 5:00 p.m., ET, unless otherwise stated in this Policy. Postmark by the required date is not sufficient. Transmittal by email or other electronic means will be accepted. However, it shall be the responsibility of the party transmitting the document(s) to ensure that the document(s) were received by the Authority, and the transmitting party shall bear any risk of an interruption or failure in the transmission of such document(s).
- e. Summary Protests shall be filed with and received by the Vice President of Procurement or designee no later than 1:00 p.m., ET, three (3) Authority Business Days following the submission deadline (date and time) as specified in the Informal Solicitation document. Summary Protests received after this timeframe will not be considered.
- f. The Authority will email the Notice of Summary Protest to Respondents at the email address provided by each Respondent in their response.

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Respondents shall bear the responsibility for the accuracy of their email address and for determining whether a Summary Protest has been filed with the Authority. The Authority shall have no obligation to seek alternative email addresses and shall have no responsibility for any parties' computer system failures.

- g. During any Summary Protest, no contact with Authority Board members, officers or employees, other than the procurement agent identified in the solicitation or designee, the Vice President of Procurement or designee, and the Authority Legal Affairs Department, is permitted from any Respondent. Such communication will result in an automatic denial of the Summary Protest and disqualification from selection for the pending solicitation.
- h. A Protesting Respondent or Intervening Party may be represented by legal counsel at their own expense.
- i. The Authority may proceed with the award of a contract or purchase order resulting from an Informal Solicitation Process to the lowest responsive, responsible Respondent. Respondents are put on notice that such solicitations are for the purpose of expeditious and cost effective procurement and that time is of the essence in filing a Summary Protest.
- j. All Informal Selection Process documents will set forth the following statement:

“Failure to follow the procurement protest policy set out in the Hillsborough County Aviation Authority’s policies constitutes a waiver of your protest and resulting claims. A copy of the procurement protest policy may be obtained by contacting the Authority via telephone at 813-870-8700 or via mail to Hillsborough County Aviation Authority, Post Office Box 22287, Tampa, Florida 33622. The policy is also available on the Authority’s website (www.tampairport.com).”

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- k. Failure to follow the requirements of this Policy shall be just cause for rejection of the Summary Protest.
- l. The Vice President of Procurement may designate a Director of Procurement to act on his behalf for any matters related to this Policy.
- 2. Required Form of Summary Protest
 - a. All Summary Protests must state that the Protesting Respondent is submitting a Notice of Summary Protest.
 - b. Delivery of the Summary Protest by certified or registered mail, return receipt required, email, or hand delivery to the Vice President of Procurement or designee is required.
 - c. Summary Protests will be date and time stamped upon receipt and, if hand-delivered, a receipt will be issued to the Protesting Respondent stating the date and time the Summary Protest was received.
 - d. Once filed and received by the Authority, the Summary Protest may not be supplemented. However, the Authority has the right to seek clarification and additional information as needed.
 - e. The Notice of Summary Protest must include the following information:
 - i. The name, postal and email addresses, and telephone number of the Protesting Respondent;
 - ii. Authority solicitation title and number or contract title, as applicable;
 - iii. A concise statement indicating the grounds and evidence, including facts, rules, regulations, statutes and constitutional provisions, the

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factual and legal basis, upon which the Summary Protest is based, with inclusion of all supporting documentation. Grounds not specifically stated in writing will be waived;

- iv. A statement of the specific ruling or relief requested; and
- v. Signature of the Protesting Respondent or an authorized agent of the Protesting Respondent.

3. Intervening Parties

- a. Intervening Parties shall have the right to intervene in a Summary Protest by filing written documentation related to the protested solicitation with the Vice President of Procurement or designee within two (2) Authority Business Days following the receipt of the emailed Notice of Summary Protest. Documentation received after this timeframe will not be considered.
- b. Delivery by certified or registered mail, return receipt required, email, or hand delivery to the Vice President of Procurement or designee is required.
- c. Intervening Party submissions will be date and time stamped upon receipt and, if hand delivered, a receipt will be issued to the Intervening Party stating the date and time the submission was received.
- d. Any Intervening Party shall bear all costs of its submissions to the Authority.
- e. Intervening Party submissions must include the following information:
 - i. The name, postal and email address, and telephone number of the Intervening Party;

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- ii. Authority solicitation title and number or contract title, as applicable;
- iii. A concise statement indicating the grounds and evidence, including facts, rules, regulations statutes and constitutional provisions, upon which the intervention is based, with inclusion of all supporting documentation;
- iv. A specific statement indicating the Intervening Party’s position with respect to the Summary Protest;
- v. A statement of the specific ruling or relief requested: and
- vi. Signature by an authorized agent of the Intervening Party.

4. Determination of Summary Protest

- a. When a Notice of Summary Protest is received, the Vice President of Procurement or designee will serve as the Review Officer to evaluate the submissions, including the Notice of Summary Protest, the documentation from any Intervening Party, and other documentation related to the protested solicitation provided to the Vice President of Procurement or designee.
- b. The decision by the Review Officer will be based on written submissions only.
- c. The Review Officer will issue a written decision to uphold or reject the Summary Protest and the basis therefor within three (3) Authority Business Days after receipt of the Notice of Summary Protest.
- d. The Authority reserves the right to extend any timeframe listed in this Policy.

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5. Summary Protest Remedies

- a. If a Summary Protest is upheld, the relief granted may be one or more of the following:
 - i. Cancel the solicitation and/or contract.
 - ii. Award in part.
 - iii. Re-compete the procurement.
- b. In no event will a contract be automatically awarded to a Protesting Respondent if the protest is upheld. Nothing herein shall prevent the Authority, at its sole discretion, from providing for an alternative remedy which is in the best interest of the Authority and in compliance with any applicable law.

6. Summary Protest Final Decision

Decisions of the Review Officer are final and subject to review or appeal by appropriate court action under Rule 9.100(c) of the Florida Rules of Appellate Procedure, or in some instances by proceedings before federal administrative agencies, in accordance with applicable law. No new facts or issues will be considered by the reviewing court or agency. By participating in the procurement process, the Protesting Respondent and any Intervening Parties acknowledge that any appeal to any court must be filed no later than 30 calendar days following the written decision of the Review Officer.