



Procurement Appeals Board and Protest Procedures

(Article 4 of the Jacksonville Aviation Authority's Procurement Code)

Sec. 4.01 – Procurement Appeals Board.

A.	<i>Creation</i>	There is hereby created the Procurement Appeals Board or PAB, which shall consist of a chairperson and two other members, all of whom will be appointed in writing by the CEO. Procurement shall act as staff and JAA's Chief Compliance Officer (CCO) shall provide counsel to the PAB, unless, in the professional opinion of the CCO it would be a conflict, in which case the CCO shall request that the Office of General Counsel provide an attorney to act as the counsel for the PAB. The PAB may not consist of any member of Procurement, the Awards Committee, the Evaluation Committee, or using department involved in the solicitation under protest.
B.	<i>Purpose</i>	The PAB shall be responsible for hearing and providing the CEO recommendations in accordance with the procedures of this article for the disposition of protests challenging a decision or an intended decision regarding a solicitation, solicitation documents, award, or any other process or procedure prescribed in this Procurement Code.

Sec. 4.02 – Protest Procedures.

A.	<i>Publication and severability</i>	JAA hereby publishes rules and regulations governing protests hereunder. In the event a court of competent jurisdiction declares any provision of these Protest Procedures to be unconstitutional, invalid, or otherwise unenforceable, then all remaining provisions shall be severable, valid and enforceable regardless of the invalidity of any other provision.
B.	<i>Definitions</i>	For the purpose of these Protest Procedures, the following definitions are provided: (1) "Competitive solicitation" or "solicitation" shall include without limitation an invitation to bid, competitive sealed bid, multi-step competitive sealed bid, competitive sealed proposal, a request for proposals and/or qualifications, or a request for quotes. (2) "Posting" means the notification of solicitations, decisions or intended decision, or other matters relating to procurement on a centralized website, by placing the same on the bulletin board(s) designated by Procurement for this purpose, or as may be consistent with § 2.02(K), hereof. (3) "Exempt purchase" means any purchase exempted or excepted by law or rule from the requirements for competitive solicitation, including without limitation purchases made pursuant to §§ 2.05, 3.08 and 3.09, hereof. (4) "Electronic transfer" is limited solely to e-mail transmissions that appear legibly on paper at the place of filing. (5) "Final Agency Action" means a final decision that results from a dismissal or proceeding hereunder, and includes actions which are affirmative, negative, injunctive, or declaratory in form. (6) "Procurement process" has the same meaning as "contract solicitation or award process."
C.	<i>Timeliness of protests</i>	In accordance with the procedures contained herein, any person or entity that is adversely affected by a decision or an intended decision hereunder and who has standing under Florida law to protest the same (the "Protestor"), must timely file a written Notice of Protest pursuant to the following:

		<p>(1) Recommendations of Award and/or Bid Rejection – Protestor shall have three (3) business days after either the posting or written notification of a decision or intended decision, whichever is earlier, in which to file a written Notice of Protest in order to timely challenge or seek relief from an intended decision or recommendation regarding an exceptional purchase, evaluation, scoring, ranking, award, or recommended conclusion to any bid or proposal solicitation process, including without limitation:</p> <ul style="list-style-type: none"> (a) a recommendation to reject a bid or proposal; (b) a contract award; or (c) the evaluation, scoring, ranking, or short-listing of bidders or proposers. <p>(2) Bid/Proposal Specifications and/or Requirements – Protestor shall have 10 business days after the posting of a solicitation or 48 hours after the posted date and time of a pre-bid or pre-proposal conference, whichever is earlier, or 48 hours after the posting of an addendum, in which to file a written Notice of Protest in order to timely challenge the requirements, terms and/or conditions contained in bid or proposal documents, including without limitation any provisions governing or establishing:</p> <ul style="list-style-type: none"> (a) the basis for making the award in question; (b) evaluation criteria and relative weight, points, or importance assigned thereto; (c) equipment, product, or material specifications; (d) proposed project schedules; (e) statements as to local participation, equal opportunity goals, or similar issues; or (f) other general solicitation or project requirements. <p>The Director may summarily dismiss an untimely submitted protest, which dismissal, upon the review and approval of JAA’s CCO, shall represent final agency action.</p>
D.	<i>Computation of time</i>	<p>The computation of the time limitations or periods contained herein shall be governed by and shall be pursuant to Florida Rule of Civil Procedure 1.090(a), as may be amended from time to time. Failure to file a written Notice of Protest within the applicable time limitation or period shall constitute a waiver of any right, remedy, or relief available hereunder.</p>
E.	<i>Form and Content of the Notice of Protest</i>	<p>A written Notice of Protest must:</p> <ul style="list-style-type: none"> (1) be addressed to the Director; (2) identify the solicitation, decision, or recommended award in question by number and title or any other language sufficient to enable the Director to identify the same; (3) state the timeliness of the protest; (4) state Protestor’s legal standing to protest; and (5) clearly state with particularity the issue(s), material fact(s) and legal authority upon which the protest is based. <p>The issue(s) raised, and the information contained in the Notice of Protest and any attached documentation filed hereunder, must clearly identify and explain the factual and legal basis for any relief sought; otherwise, the protest may be denied on its face by the Director.</p>
F.	<i>Delivery</i>	<p>The timely filing of a Notice of Protest shall be accomplished when said notice is actually received by Procurement within the applicable time limitation or period contained herein. Filing a notice may be accomplished by manual transfer via hand-delivery or mail to the Director of Procurement at 14201 Pecan Park Road, Jacksonville, Florida 32218 or by electronic transfer via facsimile to (904) 741-2350. The responsibility and burden of proof that its Notice of Protest has been timely and properly received shall rest with the Protestor, regardless as to the method of delivery employed. Filing of a Notice of Protest via E-Mail is not permitted.</p>

G.	<i>Acknowledging Protest, PAB appointment and scheduling of Protest</i>	Upon receipt of a proper and timely filed written Notice of Protest, the Director or his/her designee shall acknowledge receipt and forward the same to the CEO with a request for the appointment of the PAB, which will schedule and provide notice of the time, date and place it will hear the protest, which notice shall be provided in writing to the Protestor and to those persons or entities that may be directly affected by the resolution of the protest.
H.	<i>Discretion to continue or suspend award</i>	The Director or his/her designee shall have the discretion to proceed with the solicitation or contract award process in question or to suspend the same pending the resolution of the protest. To the extent the Director or his/her designee decides to exercise his/her discretion not to suspend the solicitation or contract award process pending the resolution of the protest, the Director or his/her designee shall set forth in writing the particular facts and/or circumstances upon which his/her decision is based.
I.	<i>Protest hearing rules and procedures</i>	<p>Protest hearings shall generally be governed and/or conducted as follows:</p> <ol style="list-style-type: none"> (1) General Statement of Rules and Procedures – Hearings before the PAB shall begin with introductions and with the CCO reading a general statement of the rules and procedures prescribed herein. (2) General Statement of the Facts – A Procurement representative shall provide a brief overview of the timeline and facts giving rise to the protest. (3) Statement of the Protestor – Representatives of the Protestor, limited solely to its owners, officers, employees and/or legal counsel, shall be required to present its case based solely upon the issue(s) and information contained in the Notice of Protest and any documents attached thereto. (4) Statements of Procurement and Other Interested Parties – Those persons or entities, other than the Protestor, who have legal standing and will be directly affected by the resolution of the protest, will be given an opportunity to be heard and to present information before the PAB, which will be followed by a statement and the presentation of information from a representative of Procurement and/or other JAA representatives. (5) Brief Closing Statements – Brief closing statements may be made by the Protestor, Procurement and other interested parties. (6) PAB Deliberation – The PAB shall consider and publicly discuss the information provided. At any time during the protest hearing, the PAB may ask questions of any person or entity present and/or represented at the hearing.
J.	<i>Standard and burden of proof</i>	The Protestor must establish by the preponderance of the evidence that the protest should be granted based upon the law, facts and information presented. Unless otherwise provided herein, the burden of proof shall rest with the Protestor. The standard of proof for proceedings hereunder shall be whether the recommendation or the decision or intended decision in question was clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without any basis in fact or law. In any protest proceeding challenging a decision or intended decision to reject all bids, proposals, or replies, the standard of review shall be whether the decision or intended decision is illegal, arbitrary, dishonest, or fraudulent.
K.	<i>Evidence</i>	For hearings under this section, the formal rules of evidence pursuant to the Florida Evidence Code will not apply. Hearsay evidence may be admissible and used to supplement or explain other evidence.
L.	<i>Vote of the PAB and final action of the CEO</i>	A majority vote of the members of the PAB shall be required to recommend that the protest be granted; otherwise, the PAB shall recommend that the protest be denied, and, once the CEO or his/her designee acts upon the PAB’s recommendation, the decision regarding the disposition of the protest shall represent final agency action, written notice of which shall be posted and shall be provided to the Protestor and to those persons or entities that may be directly affected by the resolution of the protest.