

POLICY FOR RESOLUTION OF PROTEST

Policy: PROC 3.1

Department: Procurement

Supersedes [830] dated 06/25/2003

10/31/16: Pursuant to CFX Resolution 2014-263, this policy has been administratively revised to substitute the Central Florida Expressway Authority as the correct legal entity.

POLICY FOR RESOLUTION OF PROTESTS

3-1.001 Notice of Request for Proposals, Request for Qualifications and Invitation to Bid.

The Central Florida Expressway Authority shall provide notice of Requests for Proposals, Requests for Qualifications, and Invitations to Bid by public advertisement in a newspaper of general circulation in the area where the work is to be performed. Notices may also be provided directly to persons who have previously requested to receive such notifications or to others whom the Authority reasonably believes would be interested in such work.

In addition to the provisions of this Rule 3 and specific challenged provisions set forth in a applicable Request for Proposals, Request for Qualifications, or Invitations to Bid, the terms more restrictive to the protesting party shall apply.

3-1.001.1 Protest of Request for Proposals, Request for Qualifications and Invitation to Bid.

1. Notice of Protest Required. Any person claiming to be adversely affected by the requirements, specifications, project plans or other materials with respect to which a Request or Invitation has been issued must file a written Notice of Protest with the Authority's Executive Director within seven (7) days after the first date of public advertisement in a newspaper of general circulation in the area where the work is to be performed. Such a Notice of Protest shall be filed in accordance with the terms set forth in the Request for Proposals, Request for Qualifications or Invitation to Bid and shall specifically state how the protester is adversely affected by the particulars of such Request or Invitation and the issues the protestor wishes to have considered. The timely filing of the Notice of Protest is a jurisdictional requirement and failure to timely file the same shall constitute a waiver of such person's right to challenge the requirements, specifications, project plans or any other materials included in the Request or Invitation package.
2. Written Protest. Within ten (10) days after filing the required Notice of Protest a protestor shall file a formal written statement of protest (the "Written Protest") with the Executive Director. The Written Protest shall state with particularity both the facts and law upon which the protest is based, specifying how the person is adversely affected, the issues raised, and the relief requested. The timely filing of the Written Protest is a jurisdictional requirement and failure to timely file

the Written Protest constitutes a waiver of the right to challenge the requirements, specifications, project plans or other materials issued with respect to the subject Request or Invitation.

3. Effect of Filing. During the pendency of any protest filed pursuant to this rule, the Authority may, consistent with the terms of the Request or Invitation, receive and evaluate responses thereto. Alternatively, at the discretion of the Executive Director, the Authority may postpone the deadline for receipt of proposals and/or suspend evaluation activities until the protest is resolved.
4. Resolution by Mutual Agreement. At any time prior to the conclusion of the protest procedures hereafter set forth, the protester and the Executive Director (or his/her designated agent) may reach a mutually acceptable resolution that shall be presented to the Authority board for its evaluation and action. At the earlier of the next regularly scheduled meeting of the Board or a special meeting called for such purpose, the proposed resolution shall be either: (i) ratified by the Authority, or (ii) rejected by the Authority, in which event the Authority may provide an alternative resolution to the protest, subject to agreement by the protestor within two (2) days of the Authority's rejection.
5. Protest Resolution by Hearing Officer. Unless resolved by mutual agreement, the protest will be considered by a neutral hearing officer appointed by the Executive Director of the Authority within thirty (30) days of the filing of the Notice of Protest. The hearing officer shall conduct an impartial hearing no later than the later of (i) ten (10) days after his or her appointment; or, (ii) five (5) business days after the Authority receives the Written Protest. The parties to the hearing may, but shall not be required to, be represented by counsel. Both sides may present oral, physical, and/or documentary evidence relevant to all issues properly raised in the Written Protest. The hearing officer shall regulate the course or proceedings to assure orderliness and a fair opportunity for each side to present its case. The formal rules of evidence shall not apply and hearsay shall be admissible but shall not serve as the primary basis of the hearing officer's recommended order. The hearing officer shall base his/her recommended order on such evidence adduced in the course of the proceedings as would be relied upon by reasonable, prudent persons in the conduct of their affairs. Within ten (10) days after the hearing is concluded the hearing officer shall submit a recommended order to the Authority Board, with copies to all parties, for consideration at its next regularly scheduled meeting or at a special meeting called for the purpose for considering such recommended order. At such meeting both the protestor and the Executive Director (or his/her designee) shall be afforded an opportunity to

comment upon the hearing officer's recommendation and each may request the Authority Board adopt alternative or modified findings. The action of the Authority Board with respect to the hearing officer's recommended order shall constitute final agency action for all intents and purposes.

3-1.002 Notice of Intent to Award Contract.

Following the evaluation of proposals or bids in accordance with the established evaluation criteria, the Authority shall issue a Notice of Intent to Award the contract to the vendor, service provider, contractor or professional (i.e., the proposer(s)) whose proposal or bid is determined to be most advantageous to the Authority. Notice shall be given either by: (i) posting the Notice of Intent to Award Contract at the Authority's office at 4974 ORL Tower Rd., Orlando Florida 32807; or, (ii) Authority action making the selection at a public meeting of the Authority Board.

3-1.002.1 Protest of Intent to Award Contract.

1. Notice of Protest Required. Any person which has submitted a proposal and which alleges an omission, error, mistake, incorrect evaluation or scoring of its proposal (or of another proposal to the protestor's detriment) must file a Notice of Protest in writing within the seventy-two (72) hours after the earlier of either: (i) the posting of the Notice of Intent to Award Contract; or, (ii) the Authority Board's selection determination. Such a Notice of Protest shall be filed with the Authority's Executive Director, and shall be accompanied with a protest bond if the same is required in the Proposal Package. The Notice of Protest shall specifically state that the protestor is protesting the Notice of Intent to Award Contract or selection, shall specify the relevant contract, and shall state with specificity and particularity the basis of the protest, for example, whether the protest is based upon an omission, error, mistake or incorrect evaluation or scoring of the protestor's own proposal, or an omission, error, mistake or incorrect evaluation or scoring of one or more other proposal(s). The timely filing of the Notice of Protest and protest bond is a jurisdictional requirement and failure to timely file a Notice or Protest and the protest bond (if any be required) constitutes a waiver of the right to challenge the contract award.

2. Written Protest. Within ten (10) days after filing the required Notice of Protest a protestor shall file a formal written statement of protest (the “Written Protest”) with the Authority’s Executive Director. The Written Protest shall state with particularity both the facts and law upon which the protest is based, specifying the exact nature of any claimed error, omission, mistake, or incorrect evaluation or scoring of a proposal. If the protest is based, either in whole or in part, upon an omission, error, mistake or incorrect evaluation scoring of a proposal submitted by another proposer within twenty-four (24) hours of filing the Written Protest with the Authority. The timely filing of the Written Protest is a jurisdictional requirement and failure to timely file the Written Protest constitutes a waiver of the right to challenge the Notice of Intent to award the contract or selection.
3. Effect of Filing Protest. The timely filing of a Notice of Protest and Written Protest shall halt the competitive award process until the protest is administratively resolved. However, if the Executive director determines continuation of the competitive award process is necessary without delay in order to avoid immediate and serious damage to the public health, safety or welfare, the competitive award process shall proceed without delay. In such event the Executive Director shall set forth in writing the particular facts and circumstances which require the continuance of the award process without delay. Any contract executed pursuant to a decision that the continuance of the award process is necessary without delay shall be an interim contract, subject to the final resolution of any protest arising in connection therewith, and limited in duration to the period of time measured from execution to the final resolution of any protest.
4. Resolution by Mutual Agreement. At any time prior to the conclusion of the protest procedures hereafter set forth, the protestor and the Executive Director (or his/her designated agent) may reach a mutually acceptable resolution that shall be presented to that Authority Board for its evaluation and action. At the earlier of the next regularly scheduled meeting of the Board or a special meeting called for such purpose, the proposed resolution shall be either: (i) ratified by the Authority, or (ii) rejected by the Authority, in which event the Authority may provide an alternative resolution to the protest, subject to agreement by the protestor within two (2) days of the Authority’s rejection.
5. Protest Resolution by Hearing Officer. Unless resolved by mutual agreement, the protest will be considered by a neutral hearing officer appointed by the Executive Director of the

Authority within thirty (30) days of the filing of the Notice of Protest. The hearing officer shall conduct an impartial hearing no later than the later of (i) ten (10) days after his or her appointment; or, (ii) five (5) business days after the Authority receives the Written Protest. The parties to the hearing may, but shall not be required to, be represented by counsel. Both sides may present oral, physical, and/or documentary evidence relevant to all issues properly raised in the Written Protest. If the protest is based (in whole or in part) upon an alleged omission, error, mistake, incorrect evaluation or scoring of the proposal of another contractor, such other contractor may appear at the hearing, may be represented by counsel, and may present oral, physical, or documentary evidence relevant to all issues impacting such proposer. The hearing officer shall regulate the course of proceedings to assure orderliness and a fair opportunity for each side to present its case. The formal rules of evidence shall not apply and hearsay shall be admissible but shall not serve as the primary basis of the hearing officer's recommended order. The hearing officer shall base his/her recommended order on such evidence adduced in the course of the proceedings as would be relied upon by reasonable, prudent persons in the conduct of their affairs. Within ten (10) days after the hearing is concluded the hearing officer shall submit a recommended order to the Authority Board, with copies to all parties, for consideration at its next regularly scheduled meeting or at a special meeting called for the purpose of considering such recommended order. At such meeting the protestor, the Executive Director (or his/her designee), and any other proposer who appeared before the hearing officer as provided above, shall be afforded an opportunity to comment upon the hearing officer's recommendation and each may request the Authority Board adopt alternative or modified findings. The action of the Authority Board with respect to the hearing officer's recommended order shall constitute final agency action for all intents and purposes.

3-1.002.2 Requirement that Bond be Posted.

A protest bond, substantially in the form of the example bond set for the at the end of this rule, must be simultaneously filed with each Notice of Protest filed with the Authority pertaining to a Notice of Intent to Award Contract. The amount of the required bond shall be as set for the in the applicable Request or Invitation relating to the protest. The bond shall be conditioned upon the payment of all costs adjudged against the protestor in the administrative proceedings before

the Authority or any arbitration or court proceeding. A separate bond must be posted by each protesting entity. If the Authority prevails, after completion of the protest (and any arbitration or court proceedings associated therewith), it shall recover all costs and charges included in the final decision or judgement, including attorneys' fees to the extent the same are permitted by law. Upon payment of such costs and charges by the protestor, its bond shall be returned. If the protesting party prevails, it shall be entitled to recover from the Authority all costs and charges included in the final decision or judgement. The entire amount of the bonds shall be forfeited if it is determined by the hearing officer (or a court of competent jurisdiction) that the protest was filed for a frivolous or improper purpose, including but not limited to the purpose of harassing, causing unnecessary delay, or causing needless cost for the Authority or other parties. All protest bonds must be made payable to the Central Florida Expressway Authority, must be signed and sealed by the protesting party and surety, and countersigned by the Florida resident agent of the surety. Such bonds must bind the protesting party and surety, their heirs, legal representative, successors and assigns, jointly and severally, and be conditioned upon the satisfaction of any cost and charges included in a final decision or judgement, including appellate court proceedings, in the event the Authority prevails. In lieu of a bond, the protestor may submit a cashier's check, a postal money order, or a bank money order of any state or national bank made payable to the Authority, which monies will be held in trust by the Authority. All Protest bonds must be identical in form to the Authority Bid Protest Bond form, which can be obtained from the Authority. The Authority shall be the prevailing party if the protesting party withdraws the protest at any time before entry of the final decision or judgement.

3-1.003 Pre-Award Meeting.

Central Florida Expressway Authority may require the apparent successful bidder or proposer (the "First Apparent Successful Bidder") on any project to attend a mandatory pre-award meeting (the "Pre-Award Meeting"). The purpose of such a meeting will be to identify and resolve any potential misunderstandings pertaining to the proposed contract in advance of contract award and execution. Either party may identify such issues, and the parties shall work in good faith to reach an amicable resolution of each such issue or shall negotiate in good faith until an impasse is reached on such issue.

3-1.003.1 Protest of Outcome of Pre-Award Meeting.

1. Notice of Protest Required. If the First Apparent Successful Bidder believes he has been adversely affected by the outcome (including impasse) of a Pre-Award Meeting, he must file a written Notice of Protest with the Authority within three days after completion of the Pre-Award Meeting. The Notice of Protest shall state with particularity the issue or issues that the First Apparent Successful Bidder wishes to have resolved in the protest proceeding. If the Authority's offices are closed on the date the Notice of Protest is due, the Notice of Protest may be filed by 5:00 p.m. on the next date the Authority's offices are open. The timely filing of the Notice of Protest is a jurisdictional requirement and failure to timely file a Notice of Protest constitutes a waiver of the right to challenge the requirements, specifications, project plans or other items, terms, or issues raised during the Pre-Award Meeting.
2. Written Protest. Within ten (10) days after filing the required Notice of Protest the First Apparent Successful Bidder shall file a formal written statement of protest (the "Written Protest") with the Executive Director. The Written Protest shall state with particularity both the facts and law upon which the protest is based, specifying the exact nature of the requirements, specifications, project plans or other items, terms, or issues raised during the Pre-Award Meeting which remain unresolved or which were resolved adversely to the First Apparent Successful Bidder and further stating the relief the First Apparent Successful Bidder seeks. The timely filing of the Written Protest is a jurisdictional requirement for any protest proceeding with the Authority and the failure to timely file the Written Protest constitutes a waiver of the right to challenge the outcome of the Pre-Award Meeting.
3. Effect of Filing Protest. During the pendency of the Pre-Award Meeting protest, if the Executive Director determines that progression of the project must continue without delay in order to avoid immediate and serious damage to the public health, safety, or welfare, the Authority may initiate a Second Pre-Award Meeting with the next Apparent Successful Bidder or Proposer (the "Second Apparent Successful Bidder"). In such events, the Executive Director shall set forth in writing the particular facts and circumstances which require the continuance of the award process without delay.

Before the Second Pre-Award Meeting with the Second Apparent Successful Bidder, the Authority will inform the First and Second Apparent Successful Bidders that (i) the First

Apparent Successful Bidder has a right of first refusal to move forward with the project on the terms agreed upon between the Authority and the Second Apparent Successful Bidder, if any, and (ii) the Second Apparent Successful Bidder has no remedy of resort to protest procedures unless and until the First Apparent Successful Bidder's protest concludes in such a manner that the First Apparent Successful Bidder is no longer a candidate for the project, during the period for the Second Apparent Successful Bidder's negotiations with the Authority. The Second Apparent Successful Bidder may proceed with the Second Pre-Award Meeting with this understanding or may decline without forfeiting its bid bond. The Second Apparent Successful Bidder shall have 24 hours within which to accept an offer to attend the Second Pre-Award Meeting, otherwise, the Second Apparent Successful Bidder will be deemed to have declined to participate in the Second Pre-Award Meeting. The Authority and the Second Apparent Successful Bidder each may terminate the Second Pre-Award Meeting at any time, without penalty. Any terms agreed upon by the Authority and Second Apparent Successful bidder at a Second Pre-Award Meeting, if any, may include terms that are at issue in the First Apparent Successful Bidder's protest.

If the Authority is able to agree upon terms with the Second Apparent Successful Bidder at any time up to and until final agency action by the Authority Board on the protest, the First Apparent Successful Bidder shall have a right of first refusal to accept the project on the same terms as agreed upon between the Authority and the second Apparent Successful Bidder. The right of first refusal expires 24 hours after the First Apparent Successful Bidder is notified of said terms. If the First Apparent Successful Bidder declines to accept the project on the same terms, the protest proceeding is deemed terminated,, and the project will be awarded to the Second Apparent Successful Bidder on said terms.

If the Executive Director determines that no immediate or serious damage to the public health, safety or welfare will result or that it will be more efficient under the circumstances not to initiate a Second Pre-Award Meeting (with a Second Apparent Successful Bidder) until the protest is resolved, the competitive award process may be halted or extended.

4. Resolution by Mutual Agreement. At any time prior to the conclusion of the protest procedures hereafter set forth, the First Apparent Successful Bidder and the Executive Director (or his/her designated agent) may reach a mutually acceptable resolution that shall be presented to the Authority Board for its evaluation and action. At the earlier of the next

regularly scheduled meeting of the Board or a special meeting called for such a purpose, the proposed resolution shall be either: (i) ratified by the Authority, or (ii) rejected by the Authority, in which event the Authority may provide an alternative resolution to the protest, subject to agreement by the Apparent Successful Bidder within two (2) days of the Authority's rejection.

5. Protest Resolution by Hearing Officer. Unless resolved by mutual agreement, the protest will be considered by a neutral hearing officer appointed by the Executive Director of the Authority within thirty (30) days of the filing of the Notice of Protest. The hearing officer shall conduct an impartial hearing no later than the later of: (i) ten (10) days after his or her appointment; or (ii) five (5) business days after the Authority receives the Written Protest. The parties to the hearing may, but shall not be required to, be represented by counsel. Both sides may present oral, physical, and/or documentary evidence relevant to all issues properly raised in the Written Protest. The hearing officer shall regulate the course of proceedings to assure orderliness and a fair opportunity for each side to present its case. The formal rules of evidence shall not apply and hearsay shall be admissible but shall not serve as the primary basis of the hearing officer's recommended order. The hearing officer shall base his/her recommended order on such evidence adduced in the course of the proceeding as would be relied upon by reasonable, prudent persons in the conduct of their affairs. Within ten (10) days after the hearing is concluded the hearing officer shall submit a recommend order to the Authority Board, with copies to all parties, for consideration at its next regularly scheduled meeting or at a special meeting called for the purpose of considering such recommended order. At such meeting the Apparent Successful Bidder, the Executive Director (or his designee), and any other bidder or proposer who appeared before the hearing officer as provided above, shall be afforded an opportunity to comment upon the hearing officer's recommendation and each may request the Authority Board adopt alternative or modified findings. The action of the Authority Board with respect to the hearing officer's recommended order shall constitute final agency action for all intents and purposes.

3-1.003.2 No Requirement that bond be Posted.

For Pre-Award Meeting protests, there is no requirement that a bond be posted.

3-1.004 Time Periods.

For the purpose of computing any time period prescribed herein, if the last day or hour of the time period falls on a Saturday, Sunday or legal holiday, the time period shall run until 5:00 p.m. on the next business day the Authority's offices are open. As used herein, "legal holiday" shall mean those days which are designated as such in Florida Statutes, Section 110.117 and any other day (which is not a Saturday or Sunday) on which the Authority's offices are closed.

3-1.005 Person Defined.

For purposes of these procedures, a "person" is defined to be an individual, a corporation, joint venture, partnership, proprietorship or any other entity and which timely submitted a proposal, bid or response to the Authority in regard to any proceeding under this rule. For the limited purposes of protesting the requirements, specifications, project plans or other materials set forth in the Request for Proposals, Request for Qualifications, or Invitation to Bid, pursuant to section 3-1.001.1 above, a "person" shall also include an individual, corporation, joint venture, partnership, proprietorship, or any other entity that is reasonably minimally qualified to respond.

3-1.006 Judicial Review.

Judicial review of any final action of the Authority is by certiorari in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida. The pendency of judicial review proceedings shall not stay the competitive award process, nor the award of a contract, unless a temporary injunction is issued by the Circuit Court, or unless the Authority determines it is in the best interest of the Authority to temporarily or permanently delay the competitive award process or contract award. If any court or other proceedings upholds the protestor's claim, any damages, including court-awarded damages accruing to the protestor or any other party, shall be limited solely to proposal preparation costs and reimbursement of the amount of the amount of the protest bond premium paid by the protestor, if any.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
BID PROTEST BOND

KNOW ALL MEN BY THESE PRESENTS; That we _____

_____, a (corporation) (joint venture) (partnership) (sole proprietorship) organized and existing under the laws of _____ (hereinafter called Principal), are held and firmly bound unto the Central Florida Expressway Authority (hereinafter called the Authority), in the full and just sum of _____ Dollars (\$ _____), lawful money of the United States of America, to be paid to the Authority, to which payment we bind ourselves, our heirs, executors, administrators, successor and assigns, jointly and severally.

WHEREAS, Principal has filed a Notice of Protest with the Authority, bearing the date of _____, 20____, protesting Project No. _____ (the Project), dated _____, 20____; and

WHEREAS, one of the conditions of the Project is that this Bid Protest Bond be executed;

NOW, THEREFORE, the condition of this Bid Protest Bond is such that if Principal promptly makes payment to the Authority of all cost adjudged against the Principal in any administrative hearing or appellate court proceeding instituted by the Principal, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

WITNESS the signature of the Principal and the signature of the Surety by
_____ its Agent or Attorney-in-Fact, with the seals of said Principal
and Surety affixed this _____ day of _____ in the year of 20__.

Principal (Corporation must Affix Seal)

By: _____

Title

Attest: _____
Secretary or Asst. Secretary

Surety (Place Surety's Corporate seal)

By: _____
Attorney-in-Fact

Florida Resident Agent

Type or Print Name: _____

Address: _____

Telephone: _____

NOTE: Power of Attorney showing authority of Surety's Agent of Attorney-in-Fact shall be attached.

RESOLUTION NO.: 2003-017

A RESOLUTION OF THE ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY, REPEALING PROCEDURES FOR RESOLUTION OF PROTESTS AND PROVIDING NEW PROCEDURES FOR RESOLUTION OF PROTESTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Orlando-Orange County Expressway Authority is authorized and empowered, pursuant to section 348.754, Florida Statutes, to exercise all powers necessary, appurtenant, convenient or incidental to carrying out the Authority's purposes and to do all things necessary or convenient for the conduct of its business and the general welfare of the Authority, in order to carry out the powers granted it; and

WHEREAS, the Authority maintains and has maintained procedures for the protest of Requests for Proposals, Invitations to Bid, and Notices of Intent to Award Contracts, for bidders and potential contractors seeking to do business with the Authority; and

WHEREAS, with time and experience, the Authority finds it necessary and desirable to revise, update, clarify and/or replace its protest procedures in order to facilitate amicable resolution of disputes that bidders may have with respect to Requests for Proposals, Invitations to Bid, Notices of Intent to Award Contracts, and Pre-Award Meetings,

NOW THEREFORE, BE IT RESOLVED BY THE ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY as follows:

1. Repeal of Existing Protest Procedures. Any and all protest procedures heretofore adopted by the Orlando-Orange County Expressway Authority are hereby repealed and rescinded; provided, however, said previously adopted protest procedures shall continue to apply to any protest that is underway as of the Effective Date of this Resolution until the conclusion of such protest.

2. Adoption of New Protest Procedures. In accordance with the recitals set forth above, the Protest Procedures attached hereto as Exhibit "A" are hereby adopted and shall apply from the effective date of this Resolution to any Request for Proposals, Invitation to Bid, Notice of Intent to Award Contract and/or Pre-Award Meeting, including any issued prior to the Effective Date hereof, saving and excepting those for which a protest is already pending as of the Effective Date.

3. Effective Date. This Resolution shall be effective immediately upon its adoption.


ADOPTED THIS 25th DAY OF JUNE, 2003.

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY:

By: _____


Allan E. Keen
Chairman

Attest: _____


Darleen Mazzillo
Assistant Secretary