

GDEcD Protest Process – updated April 2026

For solicitations that the Georgia Department of Administrative Services (DOAS) has identified as Exempt from the State Purchasing Act, the Georgia Department of Economic Development (GDEcD) will exercise the following Protest Process.

Protest Process

An interested supplier may file a *written protest* challenging GDEcD's compliance with applicable procurement procedures subject to the interested supplier's compliance with the provisions of this Protest Process. An "interested supplier" is defined as an actual or prospective bidder or offeror with a direct economic interest in the procurement. In challenges relating to the evaluation of bids and proposals and the award of contracts, this generally means a bidder or offeror that would potentially be in line for award if the protest were sustained. There is no such thing as a perfect procurement. Thus, a protestor must show prejudice, not mere error, for not every error compels the rejection of an award. Rather, it is the significance of errors in the procurement process that determines whether the overturning of an award is appropriate, and it is the protestor who bears the burden of proving error in the procurement process sufficient to justify relief. Protests must demonstrate a reasonable possibility of competitive prejudice; in effect, but for GDEcD's actions, the protesting party would have had a substantial chance of receiving an award. The presence of multiple nonmaterial issues in a solicitation or award does not constitute a material issue unless the interested party can establish those nonmaterial issues together would prejudice the outcome of the procurement. Protests will be resolved in accordance with the following procedures.

The following general principles shall apply in the review of protests:

- The standard for reviewing the evaluation of proposals is one of deference to any reasonable judgment of the evaluation team.
- A protesting party's simple disagreement with the evaluation team provides no basis for reversing the evaluation team's allocation of points.
- In order to demonstrate that GDEcD's evaluation was improper, a protester cannot merely suggest alternative methodologies or conclusions; it is required to establish that GDEcD's actual evaluation lacked a reasonable basis.
- Governmental officials and state entities are presumed to act in good faith, and a protester's contention that procurement officials, including but not limited to procurement personnel and evaluation team members, are motivated by bias or bad faith will not be considered unless supported by convincing proof.
- The composition of an evaluation team is a matter in which GDEcD maintains great discretion. The qualifications or the composition of an evaluation team may not be questioned unless the protester provides convincing proof of bad faith, conflict of interest, or actual bias.
- The manner and depth of GDEcD's price analysis is a matter within the sound exercise of GDEcD's discretion. Interested suppliers may not challenge the realism of a potential awardee's price, such as arguing a supplier's price is so low that it reflects a lack of understanding of GDEcD's requirements or creates a risk of unsuccessful performance.

- GDEcD maintains discretion to determine its needs; the best method to accommodate them and the responsibility for drafting proper specifications. Our needs must be specified in a manner designed to achieve full and open competition. Where a protester alleges that performance is impossible, GDEcD's General Counsel will not substitute its judgment for that of the procuring officer or sustain the protest in the absence of clear and convincing evidence that the specifications are in fact impossible to meet or unduly restrict competition. Where a requirement reflects GDEcD's minimum needs, the fact that the protester will be unable to meet the requirement does not establish that the specifications are impossible to meet or that the specifications unduly restrict competition.
- GDEcD may waive compliance with a material solicitation requirement in awarding a contract if the award will meet GDEcD's actual needs without prejudice to other suppliers. Competitive prejudice from such a waiver exists only where the requirement was not similarly waived for the protester, or where the protester would be able to alter its submission to its competitive advantage if given the opportunity to respond to the relaxed term. In cases where the protester argues that GDEcD improperly waived a certain requirement, prejudice does not mean that, had GDEcD failed to waive the requirement, the awardee would have been unsuccessful. Rather, the pertinent question is whether the protester would have submitted a different offer that would have had a reasonable possibility of being selected for award or that it could have done something else to improve its chances for award had it known that GDEcD would waive the requirement.
- If GDEcD's improper deviation from the solicitation equally affects all suppliers, then it causes prejudice to none. In the event that the deviation restricted competition in a material manner, GDEcD's General Counsel may determine that such deviation is impermissible.
- Patent ambiguities must be challenged prior to close of the solicitation. A supplier who chooses to compete under a patently ambiguous solicitation does so at its own peril and cannot later complain when GDEcD proceeds in a manner inconsistent with one of the possible interpretations.
- GDEcD will consider protests only related to Notices of Intent to Award contracts where the Georgia Department of Administrative Services (DOAS) has identified the solicitation as Exempt from the State Purchasing Act. GDEcD will not consider protests for any solicitations that are not exempt from the State Purchasing Act, or for purchases exempt from procurement pursuant to O.C.G.A. 50-7-8(11) where no solicitation has been issued.

Types of Challenges

There are numerous different challenges an interested supplier may make; however, the types of challenges are generally organized as follows:

- *Challenge to the Solicitation:* Any interested supplier capable of responding to a competitive solicitation may file a protest with respect to the competitive solicitation

process, including but not limited to a challenge to specifications or any events or facts arising during the solicitation process.

- *Challenge to Results of RFQC*: Any interested supplier submitting a timely written response to a RFQC may file a protest with respect to the results of that RFQC, including, but not limited to, events or facts arising during the evaluation process.
- *Challenge to GDEcD's Intended or Actual Contract Award*: Any interested supplier submitting a timely written response to a competitive solicitation may file a protest with respect to GDEcD's intended or actual contract award, including, but not limited to, events or facts arising during the evaluation and/or negotiation process.

Determinations of Responsibility

Affirmative determinations of responsibility by GDEcD are subject to protest only in the following circumstances:

- Challenges alleging that definitive responsibility criteria contained in the solicitation were not met.
- Challenges identifying significant evidence that GDEcD failed to consider available relevant information that, by its nature, would be expected to have strong bearing on whether the apparent successful supplier should be found responsible. Then information in question must concern serious matters that call into question the supplier's capability or qualification to contract with the state, such as allegations of fraud or other potential criminal activity.

In making a negative responsibility determination (a determination that a supplier is nonresponsible), GDEcD is vested with a wide degree of discretion and, of necessity, must rely upon business judgment in exercising that discretion. Although the determination must be factually supported and made in good faith, the ultimate decision appropriately is left to GDEcD, since GDEcD must bear the effects of any difficulties experienced in obtaining the required performance. For these reasons, GDEcD's General Counsel generally will not question a negative determination of responsibility unless the protester can demonstrate bad faith on the part of the procurement officer/evaluation team or a lack of any reasonable basis for the determination.

Form of Protest

At a minimum, the protest must be submitted in writing and must include the following:

- The name and address of the protestor;
- Appropriate identification of the solicitation
- A statement of reasons for the protest;
- Supporting exhibits, evidence or documents to substantiate any claims unless not available within the filing time (in which case the supplier must proceed to file the protest within the filing period identified below, but state the expected availability of the material); and
- The desired remedy.

To ensure the protest process is conducted efficiently and in a manner fair to all parties, GDEcD requires a protesting supplier to identify all grounds for protest during the protest filing period. GDEcD, at its discretion, may deem issues not raised in the protest filing period as voluntarily relinquished by the protesting supplier. After the protest filing period expires, any grounds for protest voluntarily relinquished by the protesting supplier may not be introduced by the protesting supplier at any time during the protest process or any subsequent litigation.

Protest Resolution

GDEcD's General Counsel will review and issue a written decision on the protest as expeditiously as possible after receiving all relevant requested information from the issuing officer and suppliers. In the event that a solicitation is cancelled by GDEcD prior to issuance of a decision, the protest will be deemed moot and no further action will be taken by GDEcD regarding the protest. Available remedies for sustained protests are outlined in the following table:

Protest Remedies	
If protest concerns...	Then, available relief includes, but is not limited to the following:
Challenge to Competitive Solicitation Process	• Modification of the solicitation document. • Extension of the solicitation closing date and time (as appropriate). • Cancellation of the solicitation.
Challenge to Results of RFQC	• Revision or cancellation of the RFQC List of Qualified Contractors. • Re-evaluation. • Cancellation. • Re-solicitation with appropriate changes to the new solicitation.
Challenge to an Intended or Actual Contract Award	• Revision or cancellation of the NOIA /NOA. • Re-evaluation and re-award. • Cancellation. • Re-solicitation with appropriate changes to the new solicitation.

Stay of Procurement During Protest Review

When a protest challenging the competitive solicitation process has been timely filed either: (1) at least one business day prior to the closing date and time if the solicitation is under \$250,000, or (2) two business days prior to the closing date and time if the solicitation is \$250,000 or

greater; the solicitation will not close until a final decision resolving the protest has been issued, unless GDEcD's General Counsel makes a written determination that the closing of the solicitation without delay is necessary to protect the interests of the state.

When a protest challenging an intended contract award has been timely filed, GDEcD will not proceed to actual contract award unless GDEcD's General Counsel makes a written determination that the issuance of a contract or performance of the contract without delay is necessary to protect the interests of the state.

If it is determined that it is necessary to proceed with contract performance without delay, the supplier with this contingent contract may proceed with performance and receive payment for work performed in strict accordance with the terms of the contract; however, such supplier will not be entitled to reimbursement for any capital outlay costs, or other up-front expenditures incurred in performing the contract. The provisions of this paragraph are not applicable to a protest pertaining to events or facts arising during the solicitation process.

Filing Protest

A protest is considered to be properly filed when it is in writing and signed by a company officer authorized to sign contracts on behalf of the supplier or legal counsel that has been engaged by the supplier, and is submitted via e-mail to the Agency Procurement Officer (APO) at mwilson@georgia.org, and GDEcD's General Counsel at sgershon@georgia.org within the filing period.

Protests Involving Ability of a Supplier to Submit a Timely Bid or Proposal

A bid or proposal that is received after the exact time specified in the solicitation is considered to be late and generally will not be considered by GDEcD. Suppliers are responsible in all respects for timely submission of bids and proposals. A supplier's protest relating to ability to submit a timely bid utilizing GDEcD's form submission will not be sustained unless GDEcD's technical review of the form submission system specifically identifies a system functionality error that prevented submission of supplier's response within two hours prior to close of a solicitation. Increased processing time is not considered to be a system functionality error.

Filing Deadlines

Protests must be received within ten (10) calendar days after the protesting party knows or should have known of the occurrence of the action which is protested, or the protest filing deadline located in table below, whichever date is earlier. GDEcD will not consider untimely protests absent evidence of malfeasance or administrative error by the procurement officer that substantially impaired an interested supplier's ability to file a timely protest. In the event that the procurement officer does not provide access to records included in the register of proposals or the administrative review within three business days of issuance of the Notice of Intent to Award, the interested supplier may file, within the filing period, a request for extension of the

filing period to extend the protest period by the number of days that it takes for the procurement officer to produce the records beyond the third business day. In the event that the procurement officer does not provide timely access to records other than those that comprise the register of proposals or administrative review, the interested supplier is required to file a protest within the filing period, indicating the failure of the procurement officer to provide timely access to records and reserving the right to file an amended protest upon production of such records. If an interested supplier fails to file a protest by the applicable deadline, GDEcD may, at its discretion, deem such failure as the supplier's voluntary relinquishment of any grounds the supplier may have for protesting through GDEcD's protest process or through subsequent litigation.

Protest Filing Deadlines		
Type of Protest	Dollar Threshold	Protest Filing Deadline
Challenge to Competitive Solicitation Process	\$25,000 to \$249,999.99	One business day prior to the closing date and time of the solicitation.
	\$250,000.00 or greater	Two business days prior to the closing date and time of the solicitation.
Challenge to Results of RFQC	N/A	The protest notice must be filed within ten calendar days of the date of RFQC List of Qualified Contractors is posted.
Challenge to an NOIA or Actual Contract Award	\$25,000 to \$99,999.99	The protest notice must be filed within five calendar days of the date the NOIA is posted.
	\$100,000.00 to \$249,999.99	The protest notice must be filed within five calendar days of the date the NOIA is posted. The supplier has an additional five calendar days to complete and submit supporting exhibits, evidence or documents with desired remedy to GDEcD.

Challenge to an Actual Contract Award where GDEcD was not required to post NOIA	\$250,000.00 or greater	The protest notice must be filed within ten calendar days of the date the NOIA is posted.
	Less than \$100,000.00	The protest notice must be filed within ten calendar days of the date the NOA is posted.

Costs

In no event will a supplier be entitled to recover any costs incurred in connection with the solicitation or protest process, including, but not limited to, the costs of preparing a response to the solicitation, the costs of participating in the protest process or any attorneys' fees.