Rules and Regulations of the State of Georgia

Department 665 RULES OF GEORGIA TECHNOLOGY AUTHORITY

Current through Rules and Regulations filed through November 6, 2026

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ADMINISTRATIVE HISTORY

The **Administrative History** following each Rule gives the date on which the Rule was originally filed and its effective date, as well as the date on which any amendment or repeal was

filed and its effective date. Principal abbreviations used in the Administrative History are as follows:

f. - filed

eff. - effective

R. - Rule (Abbreviated only at the beginning of the control number)

Ch. - Chapter (Abbreviated only at the beginning of the control number)

ER. - Emergency Rule

Rev. - Revised

Note: Emergency Rules are listed in each Rule's Administrative History by Emergency Rule number, date filed and effective date. The Emergency Rule will be in effect for 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this Emergency Rule is adopted, as specified by the Agency.

Chapters 665-1-1 entitled "General", 665-1-2 entitled "Administrative Procedures", 665-2-1 entitled "General", 665-2-2 entitled "Procurement Requests", 665-2-3 entitled "Specifications", 665-2-4 entitled "Procurement Authorization and Procedures", 665-2-5 entitled "Rejection of Offers", 665-2-6 entitled "Inspection and Testing", 665-2-7 entitled "Guarantees and Warranties", 665-2-8 entitled "Contracts", 665-2-9 entitled "Partial and Multiple Awards", 665-2-10 entitled "Waiver of Competition", 665-2-11 entitled "Miscellaneous Provisions", 665-2-12 entitled "Exemptions, Emergencies, and Special Delegations", 665-2-13 entitled "Records" have been adopted. Filed April 16, 2001; effective May 6, 2001.

Rules 665-1-2-.02 and 665-2-1-.02 have been repealed and new Rules adopted. Rules 665-2-11-.07, .08, .09 have been adopted. Filed August 10, 2001; effective August 30, 2001.

Rule 665-2-11-.10 has been repealed and a new Rule adopted. Rules 665-2-11-.12 to .15 have been adopted. Filed June 25, 2004; effective July 15, 2004.

Cite as Ga. Comp. R. & Regs. R. dept. 665, ADMINISTRATIVE HISTORY

Chapter 665-1. GENERAL APPLICABILITY.

Subject 665-1-1. GENERAL.

Rule 665-1-1-.01. General Definitions.

The following definitions shall apply generally to all rules and regulations of the Georgia Technology Authority:

(a) "Georgia Technology Authority," "Authority," or "GTA" means the Georgia Technology Authority as established in Code Section 50-25-1*et seq.* Unless specifically stated otherwise, the obligations, duties, and responsibilities of the Georgia Technology Authority contained within these rules may be executed by the CIO and Executive Director of the Georgia Technology Authority or his/her designee.

(b) "Board" means the board of directors for the Georgia Technology Authority.

(c) "Chief information officer" or "CIO" means the chief information officer of the State of Georgia provided for by Code Section 50-25-5.1.

(d) "Private sector" means any non-government, privately or publicly owned entity.

(e) "Technology" or technology resources" means hardware, software, and communications equipment, including, but not limited to, personal computers, mainframes, wide and local area networks, servers, mobile or portable computers, peripheral equipment, telephones, wireless communications, public safety radio services, facsimile machines, technology facilities including but not limited to, data centers, dedicated training facilities, and switching facilities, and other relevant hardware and software items as well as personnel tasked with the planning, implementation, and support of technology. Related consulting services shall also be included within this definition.

Cite as Ga. Comp. R. & Regs. R. 665-1-1-.01
Authority: O.C.G.A. Sec. 50-25-1.
History. Original Rule entitled "General Definitions" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-1-1-.02. Forms.

All forms referred to in these Rules are hereby incorporated and made a part of these Rules. Said forms may be obtained from the Georgia Technology Authority, 100 Peachtree Street, Suite 2300, Atlanta, Georgia 30303-3404.

Cite as Ga. Comp. R. & Regs. R. 665-1-1-.02
Authority: O.C.G.A. Sec. 50-25-7.3.
History. Original Rule entitled "Forms" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-1-2. ADMINISTRATIVE PROCEDURES.

Rule 665-1-2-.01. Promulgation, Amendment, or Repeal of Rules.

Promulgation, amendment, or repeal of all Rules in these chapters may be proposed, published and adopted by approval of a majority vote of the members present. All such actions under this section shall be in conformity with the purposes and provisions set forth under O.C.G.A. § 50-25-1*et seq.*

Cite as Ga. Comp. R. & Regs. R. 665-1-2-.01
Authority: O.C.G.A. Secs. 50-25-1*et seq.*, 50-25-7.3.
History. Original Rule entitled "Promulgation, Amendment, or Repeal of Rules" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-1-2-.02. Mandatory Compliance Required.

Mandatory compliance with these rules and regulations promulgated by the Authority is required. However, in GTA's sole discretion, no proceeding under this Chapter will be voided because of a minor technical failure of compliance that GTA determines does not harm the substantive rights of the Authority or any other party or otherwise adversely affect the integrity of the GTA's procurement processes.

Cite as Ga. Comp. R. & Regs. R. 665-1-2-.02
Authority: O.C.G.A. Sec. 50-25-7.3.
History. Original Rule entitled "Substantial Compliance Only Required" adopted. F. Apr. 16, 2001; eff. May 6, 2001.
Repealed: New Rule entitled "Mandatory Compliance Required" adopted. F. Aug. 10, 2001; eff. Aug. 30, 2001.

Rule 665-1-2-.03. Severability.

In the event that any Rule, sentence, clause or phrase of any of these Rules may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining Rules or portions thereof. The remaining Rules or portions thereof shall remain in full force and effect, as if such Rule or portions thereof so determined, declared or adjudged invalid or unconstitutional were not originally a part of these Rules.

Cite as Ga. Comp. R. & Regs. R. 665-1-2-.03
Authority: O.C.G.A. Sec. 50-25-7.3.
History. Original Rule entitled "Severability" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-1-2-.04. Waiver or Suspension of Rules.

The Georgia Technology Authority recognizes the need to exercise reasonable judgment in the administration of the rules of the Authority. A rule or requirement may be waived or suspended upon finding that circumstances warrant such action. Any such suspension or waiver may be done on a case-by-case or solicitation-by-solicitation basis.

(a) Any entity seeking relief from an Authority rule or requirement shall file a request in writing with the executive director of the Authority. At a minimum, the request shall specify the rule or requirement in question and the rationale for the request.

(b) The Executive Director shall be authorized to act on behalf of the Board in the consideration and appropriate dispensation of such requests. The Executive Director shall make a timely report to the Board concerning action taken to suspend an Authority rule or requirement.

1. If an entity's request has an impact upon a state Agency, the entity shall send a copy of the request to the executive officer of the state Agency. The state Agency shall be allowed the opportunity to send a statement to the Authority setting forth its position with respect to the request.

2. The Executive Director may request additional written documentation from the entity and/or the state Agency requesting the waiver.

(c) The Executive Director may defer action on a waiver request until such time as the Board has had a reasonable opportunity to consider the request.

Cite as Ga. Comp. R. & Regs. R. 665-1-2-.04
Authority: O.C.G.A. Sec. 50-25-7.3.
History. Original Rule entitled "Waiver or Suspension of Rules" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Chapter 665-2. INFORMATION TECHNOLOGY PROCUREMENT.

Subject 665-2-1. GENERAL.

Rule 665-2-1-.01. Forms, Terms and Conditions.

The Georgia Technology Authority (GTA) shall prescribe forms, terms and conditions and advertisement requirements for acquiring goods and services related to information technology for agencies. The forms, terms and conditions, and advertisement requirements shall be established taking into consideration market volatility, trends and conditions, legal requirements, and any other factors determined to be in the state's best interest. These shall be made available to all agencies via the GTA IT procurement website.

Cite as Ga. Comp. R. & Regs. R. 665-2-1-.01
Authority: O.C.G.A. Sec. 50-25-7.3.
History. Original Rule entitled "Forms, Terms and Conditions" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-1-.02. Definitions.

The following definitions shall apply generally to all procurement rules and regulations of the Georgia Technology Authority:

(a) "Agency," "User Agency," or "Using Agency" is defined as every state department, agency, board, bureau, commission, and authority but shall not include any agency within the judicial branch of state government or the University System of Georgia and shall also not include any authority statutorily required to effectuate the provisions of Part 4 of Article 9 of Title 11, unless they voluntarily agree to be bound by these rules for the limited purpose of the Georgia Technology Authority conducting or coordinating a technology resource purchase or solicitation on their behalf.

(b) "Agency Decisionmaker" is defined for purposes of Rule 665-2-11-.07 as either:

1. The Procurement Director, or

2. Any other GTA official (other than the Executive Director, or the Protest Coordinator or Contracting Officer for the particular procurement that is the subject of the Protest, or any member of the Protest Panel hearing the Protest) selected and appointed in the sole discretion of the Procurement Director either as a permanent GTA position or on a case by case basis at any time after receipt of a Protest and prior to the appointment of a Protest Panel or a Third Party Hearing Officer with respect to a Protest.

(c) "Best value procurement" is defined as a procurement process that has as a fundamental objective the reduction of total cost of ownership as defined in these rules or generally the best value procurement methods set forth in Section 665-2-4-.02.

(d) "Business Day" is defined as any day other than Saturday, Sunday or a day that is a public and legal holiday in the State of Georgia under O.C.G.A. Section 1-4-1.

(e) "Clarification" is defined as limited exchanges between the state and offerors that may occur after receipt of offer. Offerors may be given the opportunity to resolve clerical errors.

(f) "Communications" are defined as exchanges between the state and offerors after receipt of offers to address issues of past performance, to enhance the state's understanding of offers, to allow reasonable interpretation of the offer, or to facilitate the state's evaluation process. Communications shall not be used to cure material omissions in the offer.

(g) Competition in purchasing exists when the available market for the goods or services to be acquired consists of more than one supplier that is technically qualified and willing to submit an offer. The public competitive process is the process followed by a public agency to solicit offers from multiple suppliers to provide the specified goods or services. The process must be conducted in a manner that attempts to ensure that all qualified suppliers who are willing to submit offers are treated equitably and are not placed at a disadvantage with respect to the process outcome.

(h) "Competitive Range" is defined as the range of all of the most highly rated offers, as determined by the evaluation committee. The range shall be used to determine the optimal best value solutions to address requirements of the solicitation document.

(i) "Contract Award" is defined as the GTA's written notice of award of a contract to the successful Respondent in a particular GTA procurement.

(j) "Contracting Officer" is defined as the GTA official authorized to manage a particular GTA procurement and to issue a Contract Award with respect thereto, as set forth in the applicable Solicitation Documents for such procurement.

(k) "Contract Value" is defined for the purposes of Rule 665-2-11-.07 as the actual Contract Award amount.

(l) "Deficiency" is defined as a failure to meet a stated requirement or a combination of weaknesses in an offer that increases the risk of unsuccessful contract performance.

(m) "Estimated Contract Value" is defined for the purposes of Rule 665-2-11-.07 as GTA's pre-award estimate of the amount that will be spent by the GTA or the applicable Agency or Agencies under any contract issued in connection with a particular procurement.

(n) "Executive Director" is defined as chief information officer of the State of Georgia and the Executive Director of the Authority provided for by Code Section 50-25-5.1.

(o) "Frivolous Protest" is defined as a Protest that, based on the Protest pleading as filed, and taking all allegations of the Protest as true, is without merit, is insufficient or raises no substantial factual or legal basis on which a Protest could be sustained; provided, however, that if any court of competent jurisdiction, in a final non-appealable order, overturns the Protest Decisionmaker's final determination that a Protest was a Frivolous Protest, such Protest shall not be considered a Frivolous Protest for purposes of Rule 655-2-11-.07(f)4.

(p) "Goods" are defined as any information technology commodities including equipment, materials, or supplies.

(q) "Interested Party" is defined for the purposes of Rule 665-2-11-.07 as:

1. With respect to any Protest filed on or before the Solicitation Response Date, any party with a direct economic interest in providing the goods or services sought in the procurement that is the subject of Solicitation Document in question, and

2. With respect to any Protest filed after the Solicitation Response Date, only those Respondents who actually filed a timely and responsive Solicitation Response that complies with the Solicitation Document in question.

(r) "Negotiation" is defined as exchanges in either a competitive or sole source environment between the state and offerors that are undertaken with the intent of allowing offerors to revise their offers. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed contract. Negotiations are specific to each offer and shall be conducted to maximize the state's ability to obtain best value based on the evaluation factors set forth in the solicitation. The state may also give evaluation credit for technical solutions exceeding mandatory minimums or negotiate with offerors for increased performance beyond mandatory minimums.

(s) "Offer" is defined as a bid or proposal submitted in response to any solicitation document utilizing "Best Value" procurement methodology including Invitation for Bids (IFB), Request for Proposals (RFP), Request for Quotations (RFQ), negotiation, or other acquisition processes, as well as responses to Solution-Based Solicitations and Government-Vendor Partnerships.

(t) "Price" is defined as the amount paid by the state to a vendor for a good or service.

(u) "Procurement" is defined as acquisition of goods and services.

(v) "Procurement Director" is defined as the GTA official who supervises the procurement section of the GTA and to whom the Contracting Officer reports.

(w) "Protest" is defined as any protest, challenge or other claim, howsoever designated, to any aspect of a GTA procurement. Neither the Procurement Director's appointment of another GTA official as Agency Decisionmaker, nor the Executive Director's appointment of the Protest Panel or a Third Party Hearing Officer, shall be a basis for a Protest.

(x) "Protest Coordinator" is defined as the GTA Contracting Officer for the particular procurement that is the subject of the Protest. However, the Executive Director may request that another GTA employee (other than the Agency Decisionmaker or any member of the Protest Panel hearing the Protest) serve as the Protest Coordinator where, in the Executive Director's sole discretion, he determines that circumstances warrant such an action. The Protest Coordinator will be authorized to carry out the following duties with respect to a Protest:

1. Manage the submission of the Protest to the Protest Decisionmaker;

2. Evaluate compliance with this Procedure;

3. Issue summary dismissals in accordance with Rule 665-2-11-.07(e);

4. When necessary, request that the Executive Director appoint additional staff to assist the Protest Coordinator in performing the duties set forth herein; and

5. Any other authority delegated from time to time by the Executive Director.

(y) "Protest Decisionmaker" is defined as, with respect to each Protest, the person or panel authorized to hear, resolve or rule on that Protest, which may be the Agency Decisionmaker acting singly, the Protest Panel or the Third Party Hearing Officer as the case may be.

(z) "Protestor" is defined as an Interested Party who files a timely Protest in accordance with this Procedure.

(aa) "Protest Panel" is defined as a panel consisting of the Agency Decisionmaker and two (2) other individuals, which, when appointed in accordance with Rule 665-2-11-.07(d)2., will be authorized by the Executive Director to recommend a resolution or ruling on a Protest in lieu of the Agency Decisionmaker acting singly or a separate Third Party Hearing Officer.

(bb) "Respondent" is defined as an Interested Party that properly returns a Solicitation Response to a Solicitation Document, in accordance with the criteria set forth in such Solicitation Document.

(cc) "Rules of the GTA" is defined as the rules and regulations of the GTA at Chapter 665-1 *et seq.,* as in effect from time to time. For purposes of this Procedure, the Rules of the GTA that are applicable to a Protest shall be the Rules of the GTA in effect at the time such Protest is filed.

(dd) "Services" are defined as any process of providing services requiring specialized knowledge, experience, expertise, professional qualifications, or similar capabilities for any aspect of information technology including, but not limited to, work or task performance, review, analysis, and advice in formulating or implementing improvements in programs or services.

(ee) "Solicitation Document" is defined as a written or electronic IFB, RFQ, RFP, Solution-Based Solicitation, Government-Vendor Partnership, Request for Information (RFI) document or other acquisition documents expressly used to invite offers or request information regarding the acquisition of goods and services.

(ff) "Solicitation Decision" is defined as, with respect to each Solicitation Document issued in connection with a particular GTA procurement, the GTA decision or award with respect to such GTA Solicitation Document.

(gg) "Solicitation Decision Date" is defined as, with respect to each Solicitation Document issued in connection with a particular GTA procurement, the date the GTA issues its Solicitation Decision with respect to such GTA Solicitation Document.

(hh) "Solicitation Response" is defined as the document submitted by a Respondent as a bid, response, offer or proposal in response to a Solicitation Document.

(ii) "Solicitation Response Date" is defined as, with respect to each Solicitation Document issued in connection with a particular GTA procurement, the date designated by the GTA

for filing the Solicitation Response with the Contracting Officer, as set forth in the applicable Solicitation Document for such procurement.

(jj) "Third Party Hearing Officer" is defined for the purposes of Rule 665-2-11-.07 as an individual who is neither employed by nor affiliated with the GTA, an Interested Party or any Agency involved in the particular GTA procurement that is the subject of the Protest and who, if appointed in accordance with Rule 665-2-11-.07(d)3., will be authorized by the Executive Director to recommend a resolution or ruling on a Protest in lieu of the Agency Decisionmaker acting singly or a separate Protest Panel.

(kk) "Total Cost of Ownership" is defined as a summation of all purchase, operating, and related costs for a product or service. It includes, but is not limited to, purchase price, transportation, receiving and inspection, maintenance, operating costs, downtime, energy costs, and disposal costs.

(ll) "Weakness" is defined as a flaw in the offer that increases the risk of unsuccessful contract performance.

(mm) "Reverse Auction" is defined as a competitive process where the lowest offered price is disclosed to the bidders and the bidders are given an opportunity to offer a lower price until the auction is closed.

(nn) "Purchaser" is defined as the agency or using agency soliciting offers to acquire goods or services.

Cite as Ga. Comp. R. & Regs. R. 665-2-1-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-1.
History. Original Rule entitled "Definitions" adopted. F. Apr. 16, 2001; eff. May 6, 2001.
Repealed: New Rule of same title adopted. F. Aug. 10, 2001; eff. Aug. 30, 2001.

Rule 665-2-1-.03. General Delegation.

All agencies shall contract through GTA for any technology resource purchase of such agency exceeding $100,000, subject to the provisions of O.C.G.A. 50-25-7.2. Therefore, the State Chief Information Officer (CIO) establishes a general delegation of one hundred thousand dollars ($100,000) for each agency's technology purchases. The CIO or his designee may elect to increase or decrease this general delegation on an agency-by- agency basis or a case-by-case basis without modification of these rules. Regardless of this general delegation, agency technology procurements must adhere to all statewide technology policy standards set forth by GTA, unless expressly waived.

Cite as Ga. Comp. R. & Regs. R. 665-2-1-.03
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-7.2, 50-25-4.
History. Original Rule entitled "General Delegation" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-2. PROCUREMENT REQUESTS.

Rule 665-2-2-.01. Procedure.

Agencies shall request procurement action by GTA by means of electronic or written requests.

Cite as Ga. Comp. R. & Regs. R. 665-2-2-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Procedure" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-2-.02. Verbal Requests.

Verbal requests for procurement activities are not satisfactory substitutes for electronic or written requests except in emergencies. Electronic or written confirmation must follow any such request made in an emergency situation.

Cite as Ga. Comp. R. & Regs. R. 665-2-2-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Verbal Requests" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-2-.03. Confidentiality.

All information and documentation (verbal and written) relative to development of a contractual document for a proposed procurement shall be deemed confidential in nature, except as deemed necessary by the purchaser to develop a complete contractual document. Such material shall remain confidential until successful completion of the procurement process.

Cite as Ga. Comp. R. & Regs. R. 665-2-2-.03
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Confidentiality" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-3. SPECIFICATIONS.

Rule 665-2-3-.01. Types of Specifications.

There shall be two general types of specifications. A standard specification shall be originated and developed by GTA or any other agency or commission, statutorily authorized to develop standards. It shall be comprehensive in nature, intended for repeated use and may be changed, as quickly and as often as is necessary, to address changes in the technology marketplace. An example of this type of specification is one that complies with the required statewide Technical Architecture as developed by the GTA for statewide use. The other general type of specification shall be originated by the user and modified as necessary by GTA to accomplish the overall efforts to manage the area of information technology effectively. This type of specification may

include, but is not limited to,"brand name or equal" or "brand specific" technical and functional specifications.

Cite as Ga. Comp. R. & Regs. R. 665-2-3-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Types of Specifications" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-3-.02. Need.

GTA may inquire into the need for and level of quality of goods or services requested by an agency. After consultation with the agency, GTA may modify the level of specification requested to enhance overall direction of the state's program in the area of information technology.

Cite as Ga. Comp. R. & Regs. R. 665-2-3-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Need" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-3-.03. Development of Specifications.

(1) A standard specification is intended for general use and kept current by GTA. In formulating such a specification, advisory committees made up of personnel from various agencies and the private sector may be employed for advice and assistance at the CIO's discretion. This type of specification may be offered also for the review and comments of manufacturers and suppliers who may participate in the procurement process on the items in question.

(2) Where competition is available and advantageous to the state, every purchaser shall use/write specifications and requirements that are reasonable to satisfy the need, but not unduly restrictive, and that shall encourage competition in the open market and result in the best possible contract for the good or service needed.

Cite as Ga. Comp. R. & Regs. R. 665-2-3-.03
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Development of Specifications" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-3-.04. Articles for Special Purposes.

Where articles are to be used for educational or training purposes, by persons with disabilities, for test and evaluation or research purposes, or for any purpose deemed necessary by the CIO or his designee, special or overriding consideration may be given to the factor of suitability in the preparation of specifications, evaluation of offers, for waiver of competition, and the award of

contracts. GTA shall consult with the agency prior to modification by GTA of any information or recommendation submitted by the end user.

Cite as Ga. Comp. R. & Regs. R. 665-2-3-.04
Authority: O.C.G.A. Sec. 50-25-7.3.
History. Original Rule entitled "Articles for Special Purposes" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-3-.05. Submission for Adoption.

Upon completion of all studies, reviews, and drafts; any proposed standard specifications shall be submitted to the CIO or his designee for consideration. A specification shall be adopted as a standard if advantageous to the state. GTA may modify a standard specification on an interim basis as deemed necessary or advantageous to the state.

Cite as Ga. Comp. R. & Regs. R. 665-2-3-.05
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Submission for Adoption" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-3-.06. Copies of Specifications.

GTA shall distribute copies of standard specifications to interested parties through electronic media and these shall be available for customer and public inspection at GTA and on the GTA IT procurement website.

Cite as Ga. Comp. R. & Regs. R. 665-2-3-.06
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Copies of Specifications" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-3-.07. Confidentiality.

All information and documentation relative to the development of a specification/needs document shall be deemed confidential in nature until specification adoption or finalization of the procurement process for a specific contract.

Cite as Ga. Comp. R. & Regs. R. 665-2-3-.07
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Confidentiality" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-4. PROCUREMENT AUTHORIZATION AND PROCEDURES.

Rule 665-2-4-.01. Procurement Procedures.

All technology purchases involving the expenditure of public funds by agencies or GTA shall be in conformity with the "Best Value" information technology procurement requirements set forth in these rules. Exemptions may be granted by GTA where a waiver, special delegation, exemption or an emergency or pressing need purchase is permitted by rule. Information technology procurements not covered by statewide firm, convenience or service contracts issued by GTA shall comply with the following delegations and procedures:

(a) Small Purchases: A small purchase is defined as the purchase of goods and services, where the expenditure of public funds is twenty-five hundred dollars ($2,500) or less. If the needed technology resource can reasonably be expected to be acquired for less than two thousand five hundred dollars ($2,500) and are not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. Nothing in this rule shall apply to, or effect the laws, rules and regulations governing emergency purchases. The using agency or GTA shall award contracts for small purchases.

(b) Purchases Governed by General Delegation:

1. For purchases made by an agency or GTA involving an expenditure of public funds over two thousand five hundred dollars ($2,500) up to the general delegation limit established by the CIO, the agencies or GTA shall use the following methodologies to encourage competition:

   (i) The agency or GTA shall issue solicitation documents requesting or inviting offers;

   (ii) The agency or GTA shall include in solicitation documents standard language, including terms and conditions as published by GTA on GTA IT procurement website. If additional terms and conditions are used, they shall not conflict with GTA's standard terms and conditions unless prior written approval is obtained from GTA for unusual requirements; and,

   (iii) The agency may request distribution lists, if available from GTA, and use them in addition to distribution lists maintained by the agency for the purpose of soliciting competition.

2. Agencies shall advertise their solicitations through GTA for purchases exceeding ten thousand dollars ($10,000) up to the general delegation established by the CIO. Agencies must advertise the purchases through the Georgia Procurement Registry.

3. The agencies may award contracts under their general delegation.

(c) Procurement Procedure: Where the total requirements for goods or services involve an expenditure of public funds that exceed the general delegation established by the CIO, offers shall be solicited as follows:

1. Competitive offers for goods and services shall be solicited by GTA via advertisement, unless the advertising requirement is waived by the CIO or his designee subject to the provisions of Rule 665-2-4-.14 of this Section. This shall include offers for statewide term or convenience contracts.

2. Notwithstanding any waiver, general delegation, or exemption rules; all telecommunications goods and services shall be procured by GTA.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.01
Authority: O.C.G.A. Secs. 50-25-7.2, 50-25-7.3, 50-25-7.5, 50-25-4.
History. Original Rule entitled "Procurement Procedures" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.02. Methods of Sources Selection.

Competitive source selection may be conducted in accordance with the following best value methods.

(a) The following steps may be employed in the application of the best value procurement methodology:

1. Appropriate best value bidding method is determined by purchasing authority.

2. Solicitation document is developed and advertised in accordance with other rules of this Chapter.

3. Scheduled conferences or site visits are held in accordance with solicitation requirements.

4. Offers are received and a public bid opening is conducted. For solicitations that allow for negotiation after receipt of offers, only the names of responding bidders are revealed. Price information shall be made public after evaluation and award.

5. An evaluation committee evaluates offers in accordance with the stated evaluation factors. For solicitations that include a best value ranking process, scoring and ranking may be determined by using any consistent rating methodology, including adjectival, numerical, or ordinal rankings. The results of the evaluation committee shall be documented in the contract file. Evaluation factors may include but are not limited to quality factors; delivery and implementation schedule; maximum facilitation of data exchange and systems integration; warranties, guarantees, and return policies; vendor financial stability; consistency of the proposed solution with the state's strategic program direction; effectiveness of business solution and approach; industry and program experience; prior record of vendor performance; vendor expertise with similar projects; proven development methodologies and tools; and innovative use of technologies.

6. Clarifications, communications to establish a competitive range, or negotiations may be conducted with offerors after receipt of offers in accordance with instructions and procedures set forth in the solicitation document and as appropriate to the method of source selection chosen. In those cases where negotiation is permitted by procedures set forth in the solicitation document, offerors may be allowed to submit best and final offers subsequent to negotiated changes in the initial offer or previous offer.

7. The evaluation committee shall determine a final ranking of all offers under consideration using only the criteria set forth in the solicitation document. All offerors shall be ranked from most advantageous to least advantageous to the state.

8. Award must be made to the responsive and responsible offeror whose offer is determined in writing to be the most advantageous to the state, using all evaluation factors set forth in the solicitation. If the lowest price technically acceptable method is used, award must be made to the responding and responsible offeror with the lowest price.

9. The following types of solicitation may be used:

   (i) One-step Invitation for Bids (IFB) or Request for Proposals (RFP) Technical and price response is submitted at the same time.

      (I) If the lowest priced technically acceptable method of source selection is used, only clarifications are allowed.

      (II) If the trade off or ranking method of source selection is used, communications to establish competitive ranges or negotiations may be used. Final price adjustments or best and final offers may be allowed.

   (ii) Two step IFB or RFP Technical responses (step one) and price responses (step two) to solicitation are submitted separately.

      (I) If the lowest priced technically acceptable method is used, technical responses (step one) are evaluated for acceptability only. Only clarifications with offerors are allowed. Price offers are opened (step two) for only those offerors who submitted technically acceptable responses. Selection is made by low price analysis.

      (II) If the trade off or ranking method of source selections is used, technical responses (step one) are submitted, after which clarifications, communications to establish a competitive range, and negotiations with offerors may be allowed as specified in the solicitation document. Price responses (step two) are requested only from offerors placed in the competitive range after the technical

evaluation and discussion phase has concluded. Subsequent negotiations may be conducted with offerors after receipt of price responses. Final price adjustments or best and final offers may be allowed.

(b) A trade off method of source selection may be utilized when the best value is expected to result from selection of other than the lowest priced offer or other than the highest technically qualified offer. For a solicitation using a trade off source selection method, the following shall apply:

1. Evaluation factors that will affect the contract award decision and their relative importance shall be generally stated in the solicitation.

2. Price must be considered as an evaluation factor in the selection process. The solicitation shall state the importance or numerical weight of all evaluation factors including price.

3. Offers are ranked using the evaluation factors and their relative importance or weight. The relative overall ranking of any offer may be adjusted up or down when considered with, or traded-off against, other non-price factors. For example, an offer with the lowest price when compared to other offers would normally receive the best ranking in the price evaluation category. However, if other non-price evaluation factors received low rankings, the overall ranking of the offer would be reduced.

4. Clarifications are permitted. If specified in the solicitation, communications and negotiations may be permitted after receipt of offer.

(c) The lowest price technically acceptable source selection method may be used when best value is expected to result from selection of the technically acceptable offer with the lowest evaluated price. When using the lowest price technically acceptable method, the following shall apply:

1. The evaluation factors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of those proposals that meet or exceed the acceptability requirements for non-price factors.

2. Trade offs between price and non-price factors are not permitted.

3. Proposals are evaluated for acceptability but are not ranked using the non-price factors.

4. Clarifications are permitted. If specified in the solicitation, communications and negotiations may be permitted after receipt of offer.

(d) Any source selection process may incorporate the pre-qualification of contractors (Request for Qualified Contractors or RFQC) prior to the issuance of a RFQ or RFP when deemed advantageous by the CIO. If the source selection process anticipates negotiations then all confidentiality provisions of this Chapter shall be in full force and effect from the issuance of the RFQC to the award of the contract.

(e) GTA may employ the use of on-line reverse auctions to arrive at the lowest price. This solicitation method will satisfy any requirement necessitating a competitive sealed bidding. The names of the bidders may be held in confidence until the award of the contract.

(f) Other competitive best value source selection methodologies may be used if they are determined to be advantageous to the state and are approved for use by the CIO or his designee.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-7.4, 50-25-4.
History. Original Rule entitled "Methods of Source Selection" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.03. Electronic, Facsimile and Telephone Offers.

At the discretion of the CIO, GTA and agencies may accept electronic, facsimile, and telephone offers in response to solicitation documents that are required to be sealed, if specified in the solicitation documents or by general rule.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.03
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Electronic, Facsimile and Telephone Offers" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.04. Recall of Offers.

An authorized agent of a company may recall an offer prior to opening, through a signed request.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.04
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Recall of Offers" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.05. Public Opening.

(1) GTA and agencies shall publicly open advertised sealed procurements using the lowest price technically acceptable source selection method at the time, date, and place identified in the solicitation document. At the time of opening, the names of the bidders shall become public record after compliance with all the requirements of the GTA sealed procurement process as in Rule 665-2-4-.02 of this Section.

(2) Under a two-step process, only those offerors that the agency that issued the solicitation determines to have acceptable technical offers shall be invited to submit price offers. The price offers shall be publicly opened and the offeror(s) with the acceptable technical offer(s) notified of the time and place for the opening. After opening, the price offer(s) shall become public record if no negotiation is permitted. At least two agency working days shall be given prior to the opening. There shall be at least two agency employees present at the opening.

(3) Under the two-step process where negotiations are anticipated, only those offerors determined by the agency that issued the solicitation to have acceptable technical offers shall be invited to submit price offer(s). The price offers shall be publicly opened and the offeror(s) with the acceptable technical offer(s) notified of the time and place of the opening. The price offer(s) shall become public record upon point of award.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.05
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Public Opening" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.06. Late Offers, Modifications, or Withdrawals.

In general the agency or GTA will not consider late offers, modifications, or withdrawals unless these would be timely except for the action or inaction of agency or GTA personnel directly serving the procurement process. Offerors shall deliver all offers on time, regardless of the mode of delivery used. However, the state CIO or agency head may elect to accept any late offer if it is determined that such acceptance did not compromise the integrity of the competitive process and it is determined to be in the best interest of the state.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.06
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Late Offers, Modifications, or Withdrawals" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.07. Error/Clarification.

When the agency or GTA determines that an offer appears to contain an obvious error or otherwise where an error is suspected, the agency or GTA may investigate or act upon the circumstances. Any action taken shall not prejudice the rights of the public or other offering companies. Where offers are submitted substantially in accordance with the solicitation

document but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, the agency or GTA may seek and accept clarifications or may open communications.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.07
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Error/Clarification" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.08. Extension of Acceptance Time.

When the agency or GTA determines it is in the public interest, the agency or GTA may request that the offerors extend the time offered for the acceptance of offers.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.08
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Extension of Acceptance Time" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.09. Evaluation.

(1) In determining the award of contracts, the agency or GTA shall consider and evaluate bona fide offers as provided by statute and applicable rules. The agency or GTA shall identify in the solicitation document the evaluation criteria to be used in determining the award of contract.

(2) Unsigned offers shall be rejected by the awarding agency.

(3) During the period of evaluation and prior to award, only the information provided in the tabulation is public record. Only persons in the agency who are responsible for handling the offers and accompanying information, and others determined necessary by the agency that issued the solicitation document, shall possess offers, including any accompanying information submitted with the offers for the purpose of evaluation and award of contract. Any communication with an offeror that may be necessary for purpose of clarification of its offer shall be conducted by the agency that issued the solicitation document. Further offeror participation in the evaluation process shall not be permitted except as deemed necessary by the CIO or his designee to effectively conclude the award process or as otherwise permitted under these rules. After award of the contract or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of information excluded from disclosure under the Georgia Open Records Act.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.09
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Evaluation" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.10. Notification of Award.

If a solicitation is required to be advertised, then notice of the resulting contract award shall be posted via the Georgia Procurement Registry website or otherwise made publicly available by the agency issuing the solicitation document. After contract award, successful companies shall be notified in writing or electronically by the agency issuing the solicitation document.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.10
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Notification of Award" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.11. Lack of Competition.

The agency and GTA shall make every effort to maximize competition. Where only a single offer or a single acceptable offer is received, the agency shall ascertain the reason and make it a matter of record.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.11
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Lack of Competition" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.12. Solicitation Documents.

An agency or GTA shall use a solicitation document when soliciting offers on contracts valued over two thousand five hundred dollars ($2,500) unless the CIO or his designee waives the requirement pursuant to rule. In their solicitation documents, the agencies and GTA shall require offerors to certify that each offer is submitted without collusion and the proposed price is independently determined.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.12
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Solicitation Documents" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.13. Division of Requirements.

An agency or GTA shall not divide requirements to keep the expenditure under GTA's general delegation and thereby avoid following the appropriate contracting requirement. In the case of similar and related items and services and groups of items, the dollar limits apply to the total cost rather than the cost of any single item.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.13
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4, 50-25-7.2.
History. Original Rule entitled "Division of Requirements" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.14. Advertisement Requirements.

(1) All advertisements required by rule shall be through the Georgia Procurement Registry website. Solicitations required by rule shall be advertised continuously and at least 15 days prior to the date designated for opening unless the CIO or his designee waives advertising requirements. Conditions permitting waiver of advertising requirements shall include, but not be limited to the following:

(a) Acquisition of goods or services subject to rapid price fluctuations or immediate acceptance;

(b) Emergency situations (pressing need);

(c) Acquisition of goods or services needed for any ongoing job, task, or project;

(d) Acquisition of goods or services where performance or price competition is not available; and

(e) Any determination that no useful purpose would be served by requiring advertisement.

(2) This Rule does not prevent solicitation of offers by additional direct mailings or additional advertisement by an agency.

(a) If there is an attachment to a solicitation that the agency determines will not be electronically transmitted, then the solicitation document, when it is electronically transmitted, shall include instructions to contact the agency that issued the solicitation to obtain the attachment.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.14
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Advertisement Requirements" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-4-.15. Mandatory Conferences/Site Visits.

(1) When a solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, the date, time, location, and other pertinent details of the conference or site visit shall be given in the solitation document and in the advertisement.

(2) If only one potential offeror attends the mandatory conference or mandatory site visit, the conference or site visit may be conducted, but the agency shall investigate why only one potential offeror was in attendance and ascertain if there is any competition available. If it is determined that competition is available, time permitting, the agency may schedule another conference or site visit, if deemed to be to the advantage of the state. If it is

determined that there is no competition available, then the procurement may be handled as a waiver as permitted by rule.

(3) Any and all questions by a potential offeror regarding a solicitation document shall be addressed to the purchaser named on the document. Any and all revisions to the solicitation document shall be made only by written addendum from the purchaser. Verbal communications from whatever source are of no effect.

Cite as Ga. Comp. R. & Regs. R. 665-2-4-.15
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Mandatory Conferences/Site Visits" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-5. REJECTION OF OFFERS.

Rule 665-2-5-.01. Basis for Rejection.

In soliciting offers, the agency or GTA may reject any offer in whole or in part. Basis for rejection shall include, but not be limited to, the agency or GTA deeming the offer unsatisfactory as to quantity, quality, delivery, price or service offered; the offer not complying with conditions of the solicitation document or with the intent of the proposed contract; lack of competitiveness by reason of collusion or otherwise or knowledge that reasonably available competition was not received; error(s) in specifications or indication that revision(s) would be to the state's advantage; cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the lowest best value offer; or any determination that rejection would be to the best interest of the state.

Cite as Ga. Comp. R. & Regs. R. 665-2-5-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Basis for Rejection" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-5-.02. Negotiation.

If an agency or GTA does not receive an offer that is deemed to be advantageous to the state in response to a solicitation or all offers are rejected and if it is determined that soliciting offers again would not be in the best interest of the State, as determined by the CIO, negotiations may be conducted with sources of supply that may be capable of satisfying the requirement. The negotiations shall be conducted by GTA or that agency if under their delegation. The results of the negotiations shall be reduced to writing and any resulting contract or notice of award document shall include standard language and terms and conditions issued by GTA. If the negotiations are conducted with only one source or if only one source responds to the negotiations, the reason for lack of competition shall be documented in writing for public record. The CIO or his designee may also conduct negotiations under conditions that merit a waiver of competition or in other situations that are advantageous to the state as determined.

Cite as Ga. Comp. R. & Regs. R. 665-2-5-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Negotiation" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-6. INSPECTION AND TESTING.

Rule 665-2-6-.01. Responsibility.

The receiving agency shall inspect all materials, supplies, equipment and services upon delivery to ensure compliance with the contract requirements and specifications.

Cite as Ga. Comp. R. & Regs. R. 665-2-6-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Responsibility" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-6-.02. Selection.

GTA may periodically inspect any items or work products to ensure that specifications are met. The agency must ensure that goods or services purchased comply with applicable codes, statutes, local ordinances, policies or safety requirements.

Cite as Ga. Comp. R. & Regs. R. 665-2-6-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Selection" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-6-.03. Samples.

When samples are required in response to a solicitation document, agency or GTA may test those samples or have them tested at other designated facilities. Samples shall not be sent directly to laboratories outside the agency or GTA unless it is determined by GTA that these facilities have the capability, time, or expertise needed. Furnished samples shall be returned if reasonable and specifically requested.

Cite as Ga. Comp. R. & Regs. R. 665-2-6-.03
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Samples" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-6-.04. Specifications.

When the agency that awarded the contract or GTA determines it to be advantageous to the state, it may authorize revisions to a contract specification, including any cost adjustment associated with any such revision, as part of contract administration. If an increase in cost results in the total

contract value being more than the agency's delegation, then the agency shall obtain prior written approval from GTA, regardless of what agency initially awarded the contract.

Cite as Ga. Comp. R. & Regs. R. 665-2-6-.04
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Specifications" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-6-.05. Report of Discrepancy.

Where goods or services delivered fail to meet the specifications or contract requirements, the discrepancy shall be resolved by the agency that issued the solicitation document.

Cite as Ga. Comp. R. & Regs. R. 665-2-6-.05
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Report of Discrepancy" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-7. GUARANTEES AND WARRANTIES.

Rule 665-2-7-.01. Enforcement.

Using agencies shall enforce the contractual guarantee or warranty applying to the goods or services purchased.

Cite as Ga. Comp. R. & Regs. R. 665-2-7-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Enforcement" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-7-.02. Report to GTA Procurement.

If any agency has difficulty in obtaining satisfactory performance including service as provided for in a guarantee or warranty, under a contract handled, approved or otherwise authorized by GTA; the agency shall refer the matter to GTA.

Cite as Ga. Comp. R. & Regs. R. 665-2-7-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Report to GTA Procurement" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-7-.03. Responsibility of Using Agency.

The using agency must notify the vendor promptly when latent or other defects are discovered. In the event the vendor fails to remedy the condition reported and the contract was handled, approved or otherwise authorized by GTA, the matter shall be referred to GTA.

Cite as Ga. Comp. R. & Regs. R. 665-2-7-.03
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Responsibility of Using Agency" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-8. CONTRACTS.

Rule 665-2-8-.01. Use and Description.

State IT contracts are binding agreements between the state and successful offerors to provide information technology goods or services in accordance with stipulated terms and conditions.

(a) Term Contracts.

1. A term contract is a binding agreement between purchaser and seller to buy and sell certain goods or services for a period of time at prices established by the contract. Statewide term contracts consolidate normal, anticipated requirements of all agencies into one agreement and shall be handled by GTA. No agency may purchase goods or services covered by a statewide term contract from any other source unless authorized by the CIO or his designee.

2. A term contract shall be based upon competition, where available, with potential vendors being advised as to the actual business they are competing for and, if successful, the business they have earned.

3. Agencies may handle agency specific term contracts for use by their agency if the estimated expenditure over the term of the contract is under their delegation and the good or service is not covered by a statewide term contract. If an agency documents to GTA a need to establish an agency specific term contract for which the expenditure over the term of the contract exceeds the agency's delegation and is not covered by a statewide term contract, GTA may issue a solicitation document for the purpose of awarding an agency specific term contract for use by the requesting agency in accordance with the determining factors set forth in Rule 665-2-8-.02 of this Section.

(b) Convenience Contracts.

1. Convenience contracts are indefinite quantity contracts that are awarded by GTA that may be used by state agencies to purchase goods or services at the agency's discretion. Convenience contracts function like statewide term contracts, but their use by agencies is not mandatory.

2. If an agency elects not to purchase the goods or services it requires from an established convenience contract, the rules of competitive bidding apply to the acquisition.

(c) Master Agreements are an agreement between a vendor and the state that applies to multiple contracts or purchase orders that include standard terms and conditions.

Cite as Ga. Comp. R. & Regs. R. 665-2-8-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Use and Description" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-8-.02. Determining Factors.

In determining whether a good or service will be on a statewide term contract, GTA shall consider such factors as volume, nature of the good or service, repetitiveness of use, relative stability of prices, and transportation costs. In determining whether a good or service will be on an agency specific term contract, the agency shall consider such factors as volume, nature of the product or service, repetitiveness of use, relative stability of prices, and transportation costs.

Cite as Ga. Comp. R. & Regs. R. 665-2-8-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Determining Factors" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-8-.03. Extension of Contract Termination Dates.

When in the public interest, contractors may be requested to extend the scheduled termination dates of contracts.

Cite as Ga. Comp. R. & Regs. R. 665-2-8-.03
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Extension of Contract Termination Dates" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-9. PARTIAL AND MULTIPLE AWARDS.

Rule 665-2-9-.01. Use.

(1) Partial, progressive or multiple awards may be made where it is advantageous to the state.

(2) Notwithstanding the necessity for awards to more than one supplier in the case of some indefinite quantity contracts, such awards shall be limited to the number of suppliers deemed necessary to reasonably satisfy the intended requirements.

Cite as Ga. Comp. R. & Regs. R. 665-2-9-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Use" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-10. WAIVER OF COMPETITION.

Rule 665-2-10-.01. Policy.

Under conditions listed in this Rule, and otherwise if deemed to be in the public interest by the CIO or his designee, competition may be waived. If the procurement is under the delegation of the agency, the agency may waive competition in conformance with this rule. If the procurement is over the agency delegation, requests for waiver shall be submitted to GTA for appropriate determination. Competition may be waived under the following conditions: where competition is not available; where a needed product or service is available from only one source of supply; where emergency action is indicated; where competition has been solicited but no satisfactory offers received; where standardization or compatibility is the overriding consideration; where a donation predicates the source of supply; where personal or particular professional services are required; where a product or service is needed for a person with disabilities and there are overriding considerations for its use; where additional products or services are needed to complete an ongoing job or task; where a particular product or service is desired for educational, training, experimental, developmental or research work; where equipment is already installed, connected and in service, and it is determined advantageous to purchase it; where items are subject to rapid price fluctuation or immediate acceptance; where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies that thwarts normal competitive procedures; where a purchase is being made and a price is available from a previous contract; where the requirement is for an authorized cooperative project with another governmental unit(s) or a not-for-profit organization(s); and where a used item(s) is available on short notice and subject to prior sale.

Cite as Ga. Comp. R. & Regs. R. 665-2-10-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Policy" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-10-.02. Approval and Documentation.

Although competition may be waived pursuant to Rule 665-2-10-.01 of this Section, the use of competition is required wherever practicable. Where waiver is contemplated, agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions, when the expenditure is less than their respective delegation. Documentation justifying waiving the competitive process must be attached to the record of this type of procurement. Under an emergency situation, the procurement process requesting or inviting an offer(s) shall be handled by the agency, including standard language terms and conditions issued by GTA, unless circumstances prohibit their use. Negotiations may also be conducted with a potential vendor(s) for contracts exceeding the delegation if the agency has received prior approval from GTA. All actions that exceed the general delegation are subject to the conditions of Rule 665-2-12-.02 of this Subchapter.

Cite as Ga. Comp. R. & Regs. R. 665-2-10-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.

History. Original Rule entitled "Approval and Documentation" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-11. MISCELLANEOUS PROVISIONS.

Rule 665-2-11-.01. Confidentiality.

(1) The offeror may designate documents or records as proprietary or a trade secret however this may not prevent disclosure under the Georgia Open Records Act (O.C.G.A. 50-18-70*et seq.*). Only documents or records meeting the criteria for an exemption of the Georgia Open Records Act can be kept from disclosure by GTA pursuant to a valid Open Records Request. Documents or records that the offeror does not wish disclosed must be identified on each page in boldface at the top and bottom as "CONFIDENTIAL," along with a cite as to the relevant legal authority exempting the materials from disclosure. Cost information shall not be deemed confidential. Offerors are put on notice that the mere identification and citing of relevant authority may not obviate a disclosure under the Georgia Open Records Act.

(2) To promote maximum competition and to protect the public competitive procedure from being used to obtain information that would normally not be available otherwise, the agency that issued the solicitation document may maintain the confidentiality of trade secrets, and other procurement materials, and like information as the CIO or his designee or the agency's executive officer or his designee may determine necessary to ensure the integrity of the public purchasing process.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Confidentiality" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-11-.02. Payment Plans.

Purchase contracts may provide for payment over a period of time. Such instances shall carry written prior approval of the administrative head of the agency. Administrative heads and governing board of agencies shall see that statutory or other prohibitions are not violated. The intended plan of payment shall be included in the procurement document.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Payment Plans" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-11-.03. Change in Corporate Structure.

The state's contracts shall not be assigned. In cases where contractors are involved in corporate consolidations, acquisitions, or mergers; the agency that issued the solicitation document

resulting in the contract may negotiate agreements for the transfer of contractual obligations and the continuance of contracts within the framework of the new corporate structures.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.03
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Change in Corporate Structure" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-11-.04. Purchasing From or Through Agency Employees.

Every reasonable effort shall be made to avoid making purchases from or through employees of any agency. Prior written approval from the CIO or his designee is required before doing business with such personnel. In deciding whether to grant approval, the CIO or his designee shall consider the type of item or service needed, the prevailing market conditions, whether competition is available, the cost involved, and the effects of doing business with the employee. All such purchases must comply with all statutory requirements governing such transactions.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.04
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Purchasing From or Through Agency Employees" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-11-.05. Antitrust Violations.

In instances of identical offers, or where there are otherwise indications of collusion, awards may be made in a manner intended to discourage or prevent its continuance as deemed to represent the state's best interest. The agency that issued the solicitation documents shall report suspected antitrust violations to appropriate law enforcement authorities.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.05
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Antitrust Violations" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-11-.06. Cooperative Purchasing.

(1) Where an agency or GTA is a participant in a cooperative project with another governmental entity or with a not-for-profit organization, goods and services necessary to the project shall be acquired according to rules in this Chapter. However, if the interest of the state would be better served by one of the following acquisition methods, the CIO or his designee may authorize that acquisition method to be used:

(a) by making or authorizing acquisition on behalf of such governmental entity or not-for-profit organization; or

(b) by authorizing acquisition on the state's behalf under the provisions of another state or another governmental entity, or not-for-profit organization or consortium.

(2) For the purposes of this Chapter, such governmental entity or not-for-profit organization or consortium may be based in Georgia or in any other state.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.06
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Cooperative Purchasing" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-11-.07. Protest Procedure.

This Protest Procedure ("Procedure") is the sole and exclusive administrative procedure for protests, challenges or other claims against any aspect of any procurement or procurement processes of the GTA.

(a) Filing.

1. An Interested Party is the only party that may file a Protest under this Procedure.

2. All Protests, and any subsequent pleadings, correspondence, or other communications with respect to such Protest, must be filed in writing, with a signed original and three (3) copies delivered to the Contracting Officer on a Business Day, between the hours of 9:00 a.m. and 5:00 p.m. local time, at the same address shown for filing the Solicitation Response in the Solicitation Document that is the subject of the Protest. The filing or copying of any pleadings, correspondence or other communications with respect to a Protest with any GTA official other than the appropriate Contracting Officer shall subject the Protest to summary dismissal in accordance with Rule 665-2-11-.07(e).

3. All Protests must be received by the Contracting Officer no later than 5:00 p.m. local time on the last day that such Protest may be filed with respect to a particular Solicitation Document in accordance with this Procedure. Protests may be filed only by hand delivery, U.S. mail or commercial carrier. Protests received by email or fax will not be considered.

4. Failure to timely file the Protest in accordance with Rule 665-2-11-.07(a), or any supporting documents that are required to be filed as a part of the Protest under Rule 665-2-11-.07(b)3., will result in the Protest being deemed untimely and subject to summary dismissal pursuant to Rule 665-2-11-.07(e). Protests will be date/ time stamped by the GTA, and timeliness will be determined solely by the GTA with reference to such date/time stamp.

5. Upon receipt of a Protest, the Protest Coordinator shall review the Protest for compliance with the procedures and requirements set forth within this Rule, the applicable Solicitation Document, and with the specific requirements set forth in Rule 665-2-11-.07(b). Protests that fail to comply with any mandatory item in that rule shall subject the Protest to summary dismissal in accordance with Rule 665-2-11-.07(e). Upon receipt of any subsequent pleadings, correspondence or other communications with respect to a Protest that are permitted by this Rule or requested by the Protest Decision maker from the Protestor, the Contracting Officer will forward such materials as expeditiously as possible to the appropriate Protest Decision maker for the Protest. Upon receipt of any subsequent pleadings, correspondence or other communications with respect to a Protest that are not permitted by this Procedure, Rule 665-1-2-.04, or requested by the Protest Decision maker from the Protestor, the Contracting Officer will forward such materials as expeditiously as possible to the appropriate Protest Coordinator for disposition under Rule 665-2-11-.07(e).

(b) Form of the Protest.

1. All Protests must be filed in an envelope labeled "PROTEST," which identifies the Protestor's name and address, the name of the GTA Contracting Officer, the GTA title assigned to the procurement, and the applicable solicitation or contract numbers.

2. Protests must be on the Protestor's letterhead and shall not exceed ten (10) pages in length (including all attachments and exhibits thereto that contain any written pleadings or argument, but excluding supporting documentation under Rule 665-2-11-.07(b).3). Each page shall have print on only one side of the page with margins no smaller than one inch (1"). The font size shall be no smaller than Courier 10 characters per inch, 12 point (or equivalent).

3. Any supporting documentation that is cited or specifically referenced in the Protest, whether or not it is not already in the possession of the GTA (including copies of any Solicitation Documents), must be filed simultaneously with the Protest.

4. Each Protest shall contain the following mandatory information:

   (i) Protestor's name, address, telephone number, facsimile number and e-mail address.

   (ii) A signed and notarized affidavit of the Protestor's chief executive officer or the Protestor's legal counsel, given under oath and expressly stating that it is given under penalty of perjury, that the contents of the Protest are true and correct and that the filing of the Protest is authorized by the Protestor's chief executive officer.

(iii) The signature of the Protestor's chief executive officer or the Protestor's legal counsel, whichever is signing the Protest for or on behalf of the Protestor, notarized separately from, and in addition to, the notarized affidavit under Rule 665-2-11-.07(e)4. (ii).

(iv) The specific title assigned by the GTA to the procurement and to the specific Solicitation Document that is the subject of the Protest, and all associated GTA solicitation or contract numbers, must be clearly shown on each page of the Protest.

(v) A specific detailed statement of all legal and factual grounds relied upon by the Protestor in filing its Protest. Any grounds not included in the Protest that the Protestor could have raised when the Protest was filed will be deemed irrevocably waive d and may not be part of, or grounds for, that or any subsequent Protest or other legal action filed by Protestor.

(vi) Information in the form of signed affidavits or supporting documentation sufficient to show that the Protestor qualifies as an Interested Party for the procurement with respect to which such Protest is filed.

(vii) Evidence that the filing of the Protest is timely along with all supporting documentation.

(viii) A specific statement of the form and nature of the relief requested by Protestor.

5. The Protestor's failure to include in its Protest all of the mandatory items specified in Rule 665-2-11-.07(b) shall subject the Protest to summary dismissal in accordance with Rule 665-2-11-.07(e).

(c) Time for Filing.

1. Protestors challenging any aspect of a particular procurement with respect to any matter or event first occurring on or before the Solicitation Response Date of a particular Solicitation Document, including, without limitation, any aspect of such particular Solicitation Document, shall file their Protest within five (5) Business Days of when the basis for the Protest is known or should have been known to the Protestor (whichever is earlier) but in no event later than the Solicitation Response Date for such Solicitation Document. Any Protest by the Protestor with respect to any matter or event first occurring on or before the Solicitation Response Date, including any aspect of the procurement process or the Solicitation Documents issued or occurring prior thereto, must be made within the time frame set forth in Rule 665-2-11-.07(c)1. or will be deemed irrevocably waived and may not be part of, or grounds for, any subsequent Protest or other legal action filed by Protestor. For purposes of this Procedure, Interested Parties shall be deemed to have

knowledge of the form and contents of any Solicitation Document at the time that such Solicitation Document is first posted to the Georgia Procurement Registry website or otherwise put on public notice in accordance with the Rules of the GTA.

2. Protestors challenging any aspect of a particular procurement with respect to any matter or event first occurring after the Solicitation Response Date with respect to the particular Solicitation Document and on or prior to the Solicitation Decision Date with respect to such Solicitation Document, including the Contract Award or any other decision issued by the GTA with respect to such procurement during such period of time, shall file their Protest within five (5) Business Days of when the basis for the Protest is known or should have been known to Protestor (whichever is earlier) but in no event later than five (5) Business Days after the Solicitation Decision Date. Any Protest by the Protestor with respect to any matter or event first occurring after the Solicitation Response Date with respect to the particular Solicitation Document and on or prior to the Solicitation Decision Date with respect to such Solicitation Document, including any aspect of the procurement process occurring during such period of time in the procurement with respect to which the Protest is filed, must be made within the time frame set forth in Rule 665-2-11-.07(c)2. or will be deemed irrevocably waived and may not be part of, or grounds for, any subsequent Protest or legal action filed by Protestor.

3. Protests not filed in accordance with the deadlines set forth in Rule 665-2-11-.07(c) shall be deemed untimely and subject to summary dismissal pursuant to Rule 665-2-11-.07(e).

(d) Protest Decision maker.

1. Except as specifically set forth in Rule 665-2-11-.07(d)2. or Rule 665-2-11-.07(d)3., all Protests shall be decided by the GTA Agency Decisionmaker as the Protest Decisionmaker who is authorized by the Executive Director to resolve or rule on any Protest. The Agency Decisionmaker's actions, decisions and orders in such capacity as Protest Decisionmaker shall be deemed to be on behalf of the Executive Director and effective as though taken by the Executive Director.

2. At the sole and exclusive discretion of the Procurement Director exercised at any time prior to the appointment of a Third Party Hearing Officer or the issuance of a decision with respect to a Protest, the Procurement Director may request that the Executive Director appoint a Protest Panel to recommend a resolution or ruling on any Protest in accordance with Rule 665-2-11-.07(i)4. Upon any such appointment of a Protest Panel by the Executive Director, the Protest Panel's actions, decisions and orders in such capacity as Protest Decisionmaker shall be deemed to be on behalf of the Executive Director and effective as though taken by the Executive Director, subject, however, to Rule 665-2-11-.07(i)4. Upon the request for and appointment of a Protest Panel with respect to a particular Protest, such appointment of a Protest Panel with respect to such Protest shall be irrevocable and

the Agency Decisionmaker shall not thereafter be entitled to rule singly or to request the appointment of a Third Party Hearing Officer under Rule 665-2-11-.07(d)3. with respect to such Protest.

3. At the sole and exclusive discretion of the Procurement Director exercised at any time prior to the appointment of a Protest Panel or the issuance of a decision with respect to a Protest, the Procurement Director may request that the Executive Director appoint a Third Party Hearing Officer to recommend a resolution or ruling on any Protest in accordance with Rule 665-2-11-.07(i)4. Upon such appointment of a Third Party Hearing Officer by the Executive Director, the Third Party Hearing Officer's actions, decisions and orders in such capacity as Protest Decisionmaker shall be deemed to be on behalf of the Executive Director and effective as though taken by the Executive Director, subject, however, to Rule 665-2-11-.07(i)4. Upon the request for and appointment of a Third Party Hearing Officer with respect to a particular Protest, such appointment of a Third Party Hearing Officer with respect to such Protest shall be irrevocable and the Agency Decisionmaker shall not thereafter be entitled to rule singly or to request the appointment of a Protest Panel under Rule 665-2-11-.07(d)2. with respect to such Protest.

(e) Summary Dismissal: The Protest Coordinator, at any time prior to forwarding the Protest to the Protest Decisionmaker, or the Protest Decisionmaker at any time thereafter, may, in their sole discretion, summarily dismiss any Protest failing to comply with any aspect of this Procedure or any aspect of the applicable Solicitation Documents issued by the GTA. The Protestor will be notified in writing by facsimile transmission or electronic means, with the original to follow by United States Mail, of the summary dismissal of their Protest.

(f) Determination that a Protest is a Frivolous Protest.

1. The Protest Coordinator shall review the Protest to determine whether, in the Protest Coordinator's sole discretion, the Protest meets the definition of a Frivolous Protest. If the Protest Coordinator does not make such review, or after such review either does not determine or declines to determine that the Protest is a Frivolous Protest, the Protest Decisionmaker shall render a decision on the Protest in accordance with Rule 665-2-11-.07(g).

2. If, after review, the Protest Coordinator determines that the Protest is a Frivolous Protest, the Protest Coordinator will notify the Protestor in writing by facsimile transmission or electronic means, with the original to follow by United States Mail, of such determination.

3. The Protestor shall have five (5) Business Days from the date the Protest Coordinator issues the facsimile or electronic notification under Rule 665-2-11-.07(f)2. in which to deliver to the Protest Coordinator the Protestor's written election to proceed with the Protest. Such notice of an election to proceed may be filed with the Protest Coordinator only by hand delivery, U.S. mail or commercial

carrier, and notices received by email or fax will not be valid. Failure to notify the Protest Coordinator prior to 5 p.m. on the fifth (5th) Business Day in accordance with the foregoing, or, if applicable, to simultaneously file the bond required by Rule 665-2-11-.07(f)4., shall be deemed a withdrawal of the Protest. Protestor's written election to proceed with the Protest will be date/time stamped by the GTA, and timeliness will be determine d solely by the GTA with reference to such date/time stamp.

4. Any Protestor who has filed at least two (2) Protests with GTA that are determined by the Protest Coordinator or the Protest Decisionmaker to be Frivolous Protests and were not subsequently withdrawn by the Protestor shall be required by the GTA or the Protest Decisionmaker to file a bond, in accordance with this provision, as a condition precedent to any other Frivolous Protest proceeding through the provisions contained in Rule 665-2-11-.07 to a final determination. In the event a bond is required, and the Protestor decides to proceed with the Protest, the Protestor must file with the Executive Director, simultaneously with the Protestor's notice to the Protest Coordinator of its election to proceed with the Protest in accordance with Rule 665-2-11-.07(f)3., either a cash bond or a surety bond executed by the Protestor as the principal and by a surety company qualified and authorized to issue bonds and do business in the State of Georgia.

   (i) The bond shall be payable to the GTA and in an amount equal to:

      (I) For any Protest filed prior to Contract Award, ten percent (10%) of the Estimated Contract Value, or

      (II) For any Protest filed after Contract Award, ten percent (10%) of the Contract Value.

   (ii) The bond shall be for an indeterminate period to cover the duration of the Protest and conditioned to provide indemnification for the direct and consequential costs, damages and expenses arising out of the filing, including, but not limited to:

      (I) Any costs, damages and expenses to the GTA from the processing of the Protest,

      (II) Any costs, damages and expenses to the GTA or any Agency of delaying the Contract Award, and

      (III) All costs and expenses of related litigation, including attorney's fees incurred by the GTA in connection with the Protest and any such related litigation.

5. In the event that the final decision on the Protest issued by the Protest Decisionmaker includes a finding that the Protest was a Frivolous Protest or if the

Protest is denied, the GTA shall have the right to recover on the bond for the costs, damages and expenses set forth in Rule 665-2-11-.07(f)4. or the amount of the bond, whichever is less. The bonding company shall pay immediately upon receipt of written notification from the GTA of any final decision rendered by the Protest Decisionmaker that the Protest was a Frivolous Protest or that the Protest is denied or, if such decision rendered by the Protest Decisionmaker is appealed, upon receipt of written notification from the GTA of any final order or judgment of any court having jurisdiction affirming such decision. After payment in full to the GTA of all of the costs, damages and expenses set forth in Rule 665-2-11-.07(f)4., any remaining balance of the bond will be discharged, but if the bond is insufficient to discharge in full all such costs, damages and expenses, GTA shall retain the right to recover any amount not covered by the bond from the Protestor. In the event the Protest is sustained or is found not to be a Frivolous Protest, the bond shall be returned to the Protestor.

6. The Procurement Director or the Procurement Director's designee shall keep a log of all Frivolous Protests that are not withdrawn in accordance with Rule 665-2-11-.07(f)3. However, if any court of competent jurisdiction, in a final nonappealable order, overturns the Protest Decisionmaker's final determination that a Protest was a Frivolous Protest, such Protest shall not be considered a Frivolous Protest for purposes of this Rule 665-2-11-.07(f)4.

(g) Time for Decision by Protest Decisionmaker: Protests that are not either summarily dismissed or withdrawn (or deemed withdrawn) shall be forwarded by the Protest Coordinator as expeditiously as possible after the end of the review period referred to in Rule 665-2-11-.07(f)1. to the Protest Decisionmaker for a decision. The Protest Decisionmaker shall issue a decision as expeditiously as possible after the later to occur of:

1. Thirty (30) Business Days from the day the Protest is forwarded to the Protest Decisionmaker pursuant to Rule 665-2-11-.07(g), or

2. The receipt of any requested information from the Contracting Officer, the Protestor or any other party who has relevant information that the Protest Decisionmaker deems necessary in order to render its decision on the Protest.

(h) Protest Decisionmaker's Investigation.

1. The Protest Decisionmaker may request or permit submission of additional statements or documentation from the Contracting Officer, as the Protest Decisionmaker deems necessary in its sole discretion.

2. The Protest Decisionmaker may make a reasonable investigation and is authorized to request any information or documentation it deems necessary in order to render a decision on the Protest.

(i) Protest Adjudication Procedures.

1. The Protest Decisionmaker, in its sole discretion, may issue written questions to the Protestor on any issue the Protest Decisionmaker deems necessary for its consideration of the Protest. Such written questions may be issued in lieu of or in addition to a hearing. Unless specifically required or permitted by this Procedure, or otherwise specifically requested by the Protest Decisionmaker in writing to the Protestor, the Protestor may not file any written pleading, motion or other written documentation with the Contracting Officer or the Protest Decisionmaker after Protestor's filing of the initial Protest.

2. The Protest Decisionmaker, in its sole discretion, either at the Protest Decisionmaker's own instance or upon the Protestor's prior written request, may elect to conduct a hearing in connection with the Protest. Any requests for a hearing must include a brief statement demonstrating that the Protest Decisionmaker's decision will be aided by a hearing. In the event that the Protest Decisionmaker schedules a hearing, the notice of the hearing may set forth the scope of the hearing, including, but not limited to, the issues to be addressed, the length of hearing and whether documentary or testimonial evidence will be accepted. Alternatively, the Protest Decisionmaker may conduct a pre-hearing conference concerning the procedures to be followed at the hearing, what issues are under consideration and a list of witnesses who may testify. The issues and evidence considered by the Protest Decisionmaker are within the sole discretion of the Protest Decisionmaker.

3. The Protest Decisionmaker shall have the discretion to review the Protest Coordinator's determination that a Protest is a Frivolous Protest. If the Protest Coordinator has not made a determination that a Protest is a Frivolous Protest, the Protest Decisionmaker may determine that the Protest is a Frivolous Protest in accordance with this Procedure. Subject to Rule 665-2-11-.07(i)4., the Protest Decisionmaker may fashion any remedy the Protest Decisionmaker deems consistent with the procurement process and the Solicitation Documents, including without limitation,

   (i) Deny the Protest in whole or in part,

   (ii) Sustain the Protest in whole or in part, or

   (iii) Subject to Rule 665-2-11-.07(i)4., order the Contracting Officer to take any measure consistent with the Protest Decisionmaker's remedy, including without limitation,

      (I) Award the contract in accordance with the Contracting Officer's original decision,

      (II) Suspend Contract Award or other Solicitation Decision and reevaluate the Solicitation Responses,

(III) Cancel the procurement or solicitation,

(IV) Amend the procurement, or

(V) Any other remedy the Protest Decisionmaker determines is necessary to protect or maintain the integrity of the GTA's procurement process.

4. The decision of the Protest Decisionmaker shall be final; provided, however, that if a Protest Panel or a Third Party Hearing Officer is the Protest Decisionmaker, the Protest Panel or Third Party Hearing Officer shall only be entitled to make a written recommendation to the Executive Director containing the Protest Panel's or Third Party Hearing Officer's proposed ruling on the Protest.

(i) The Executive Director may:

(I) Accept, modify or reject the Protest Panel or Third Party Hearing Officer's recommendation in whole or in part,

(II) Return the matter to the Protest Panel or Third Party Hearing Officer with instruction, or

(III) Make any other appropriate disposition.

(ii) The Executive Director's decision shall be deemed the final decision of the Protest Decisionmaker and within the sole discretion of the Executive Director.

(j) Stay of Procurement During Protest: The Executive Director may order a stay in the opening of a Solicitation Response or of the contract performance if the Executive Director determines, in the Executive Director's sole discretion, that a stay is in the best interest of the GTA, any affected Agency or the State of Georgia. Should the Executive Director not stay contract performance pending the resolution of any Protest to an actual Contract Award, the contract shall be awarded on a contingent basis, subject to revocation, revision or other adjustment or modification based on the final decision of the Protest Decisionmaker in such Protest.

(k) Costs: A Protestor shall not be entitled to recover any costs incurred in connection with the procurement process, the solicitation, the Protest, and/or compliance or attempted compliance with this Rule, including preparation costs or attorneys' fees.

(l) Governing Law: The laws and regulations of the State of Georgia, without application of its conflicts of laws principles, shall govern any action brought pursuant to this Procedure.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.07
Authority: O.C.G.A. Sec. 50-25-7.3.
History. Original Rule entitled "Protest Procedure" adopted. F. Aug. 10, 2001; eff. Aug. 30, 2001.

Rule 665-2-11-.08. Code of Ethics for Government Service.

The provisions of O.C.G.A. § 45-10-1*et seq.* strictly apply to these rules, to the actions of the GTA, and to all parties participating under these Rules.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.08
Authority: O.C.G.A. Secs. 45-10-1, 50-25-7.3.
History. Original Rule entitled "Code of Ethics for Government Service" adopted. F. Aug. 10, 2001; eff. Aug. 30, 2001.

Rule 665-2-11-.09. Contract Termination for Convenience.

At its sole option and in the exercise of its sole discretion, GTA may terminate a contract, in whole or in part, for any reason with seven (7) days' written notice to the contractor ("Notice of Termination for Convenience").

(a) Notices of Termination for Convenience will specify the extent of the termination and the effective date.

(b) After receipt of a Notice of Termination for Convenience, and except as otherwise directed by GTA, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this section:

1. Stop work as specified in the Notice of Termination for Convenience.

2. Place no further subcontracts or orders for materials, services or facilities, except as necessary to complete the continuing portion of the contract.

3. Terminate all subcontracts and orders to the extent they relate to terminated work.

4. Assign to GTA as directed by the contracting offer, all rights, title, and interest of the contractor under the subcontracts and orders terminated, in which case GTA may settle or pay termination settlement proposal arising out of those terminations.

5. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

6. As directed by the Contracting Officer, transfer title and deliver to GTA -

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to GTA.

7. Complete performance of the work not terminated.

8. Take any action that may be necessary or that the Contracting Officer may direct, for the protection and preservation of the property related to the Contract that is in the Contractor's possession and in which GTA has or may acquire an interest.

9. Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subsection (f) of this section; provided, however that the Contractor:

   (i) Is not required to extend credit to any purchaser and

   (ii) May acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by GTA under the contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

10. Within seven (7) days after the effective date of termination, the Contractor shall submit to the Contracting Officer a written final termination settlement proposal in the form and with the certification required by the Contracting Officer. The amount of the final termination settlement proposal shall not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated.

11. The Contracting Officer and the Contractor may use the final termination settlement proposal as the basis for negotiating an agreed upon whole amount to be paid to the contractor because of the termination for convenience.

12. If the Contracting Officer and Contractor fail to reach agreement in the whole amount to be paid to the Contractor because of the termination for convenience, the Contracting Officer shall pay the Contractor the amounts determined as follows:

   (i) The total of -

(I) The contract price for completed supplies or services accepted by GTA not previously paid for;

(II) The costs incurred in the performance of the work terminated, including initial costs and preparatory expenses applicable thereto;

(III) The costs of settling and paying termination settlement proposals under terminated subcontractors or orders that are properly chargeable to the terminated portion of the contract.

(ii) Less -

(I) All unliquidated advance or other payments to the contractor under the termination portion of the Contract;

(II) The amount of any devices which GTA has against the Contractor under the Contract; and

(III) The agreed price for, or the proceeds of sale of, materials, supplies, or other items acquired by the Contractor or sold under the provisions of the section and not recovered or credited to GTA.

13. Contractor may appeal the final termination amount paid, if such amount is not a result upon which the Contracting Officer and the Contractor have agreed. Any such appeal must comply with the requirements set forth in the regulations for the resolution of disputes and claims.

14. The GTA may terminate a Contract for Convenience of the State, GTA or any Agency.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.09
Authority: O.C.G.A. Sec. 50-25-7.3.
History. Original Rule entitled "Contract Termination for Convenience" adopted. F. Aug. 10, 2001; eff. Aug. 30, 2001.

Rule 665-2-11-.10. Default and Emergency Cover; Debarment.

(1) Where an agency is a party to a contract procured through GTA finds a contractor in default for failing to perform in accordance with the contract requirements, terms or conditions, such agency may take action, immediate if necessary, to purchase the needed goods or services on the open market and charge any additional cost for the goods or services and expense for doing so to the defaulting contractor, where such default results

in the creation of an emergency or pressing need as those terms are defined in Rule 665-2-12-.02. If an agency finds a contractor in default, such action and the circumstances shall be reported by the agency to GTA in writing. This does not limit any other remedies that may be available to the state or agency.

(2) GTA may initiate suspension and debarment proceedings at the agency's request or upon GTA's own discretion in accordance with Rule 665-2-11-.13.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.10
Authority: O.C.G.A. Secs. 50-25-4, 50-25-7.3.
History. Original Rule entitled, "Default Proceedings; Debarment" adopted. F. Apr. 16, 2001; eff. May 6, 2001.
Repealed: New Rule entitled "Default and Emergency Cover; Debarment" adopted. F. June 25, 2004; effective July 15, 2004.

Rule 665-2-11-.11. Faithful Performance.

(1) A bond, or other means of ensuring faithful performance, may be required on the contractor at the contractor's expense.

(2) Liquidated damages may be provided for in the contract, as a means of ensuring faithful performance from the contractor.

(3) The agency may hold as a retainage a percentage of the contract value to be remitted upon final acceptance by the agency.

(4) The agency may withhold final payment contingent on acceptance of the final deliverable.

(5) Performance-based payments may be utilized.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.11
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Faithful Performance" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-11-.12. Offeror Responsibility.

(a) Policy. Purchases shall be made from, and contracts shall be awarded to responsible offerors in accordance with O.C.G.A. § 50-25-7.3(a)(6). Because it is important that the State strive for best value, an award to an offeror is not required solely because that offeror submits the lowest offer. As used throughout these Rules, the term "offeror" refers to any entity that may respond to an Invitation for Bids, Request for Proposals, or any other procurement solicitation document, by whatever name it is called.

(b) General Standards.

1. A responsible offeror is one that GTA believes has the capability in all respects to perform fully the contract requirements and the business integrity to justify a public contract award.

2. Responsibility shall be generally presumed.

3. GTA may base its belief that an Offeror is responsible on responses provided on the offeror's "Statement of Responsibility Certification Form" (where such a form is used) and/or based on an offeror's responses to the requirements of the solicitation document.

4. In order for an offeror to be deemed non-responsible, the contracting officer must make an affirmative determination of non-responsibility.

5. GTA shall have the right to conduct investigations and other forms of due diligence into any offeror's (or potential offeror's) responsibility status at any time and for any reason. Such due diligence may include investigations into one or more of the following areas listed in Rule 665-2-11-.12(b)6 below.

6. Areas affecting an offeror's responsibility may include, but are not necessarily limited to one or more of the following criteria:

   (i) adequacy of financial resources. This may include, but is not limited to, the ability to obtain required bonds and insurance from sureties and insurance companies authorized to do business in Georgia.

   (ii) satisfactory ability to comply with the contract requirements, considering the firm's other business obligations.

   (iii) satisfactory accounting and auditing procedures.

   (iv) satisfactory technical qualifications.

   (v) satisfactory experience;

   (vi) adequacy of the organization, material, equipment, facilities and personnel resources and expertise necessary to carry out the work and meet required delivery or performance schedules;

   (vii) whether offeror is presently debarred or suspended from bidding or proposing by any governmental entity;

   (viii) whether offeror is presently proposed for debarment or suspension from bidding or proposing by any governmental entity;

(ix) Whether offeror has within a three year period preceding the present procurement been convicted of, or had a civil judgment rendered against them for, commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(x) Whether offeror is presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(xi) Whether offeror has had a contract terminated for default in the last 3 years.

(xii) Whether offeror is currently under investigation for any possible breach of contract, or fraud or allegations of criminal activity related to the types of Services requested within the subject procurement.

(xiii) satisfactory record of performance.

(xiv) Whether offeror has a satisfactory record of integrity and business ethics in any public or private procurement.

7. Failure of a firm to provide relevant information specifically requested by the Contracting Officer may be grounds for a determination of non-responsibility.

(c) Special Standards

1. When it is necessary for a particular contract or class of contracts, the Contracting Officer shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that certain minimum experience or specialized facilities are needed for adequate contract performance.

2. The special standards shall be set forth in the solicitation and shall apply to all offerors.

(d) Statement of Responsibility Certification Form

1. GTA may create one or more certification forms, known as "Statement of Responsibility Certification Forms," to facilitate responsibility determinations. The contents of such forms may be changed from time to time by GTA procurement

staff, but must always be consistent with this Rule 665-2-11-.12. Rule 665-2-11-.12 shall control in the event of any conflict between the contents of such certification forms and the Rule.

2. Obligation to File Certification Form. Where a solicitation document requires the submission of a certification form, offerors are obligated to complete and file such certification form at the time specified, and in the absence of a specific deadline, with submission of offeror's bid/proposal. Offerors are further obligated to provide updates to any information submitted, if the responses change at any time prior to contract award.

3. Subcontractors. Where appropriate, GTA may require that an offeror's subcontractors complete and submit Statement of Responsibility Certification Forms as pre-condition to contract award. In such cases, GTA may require offerors to notify their subcontractors of their obligation to complete and file a Statement of Responsibility Certification Form.

4. Failure to Submit Information as Required: Consequences. Where an offeror fails or refuses to submit the required information, the offeror shall be ineligible for contract award in the subject procurement. False certification or information shall be grounds for a non-responsibility determination; debarment; termination for default; or, any combination thereof,

5. Where a solicitation document requires the submission of a certification form, failure to file a Statement of Responsibility Certification Form shall be an amendable defect prior to contract award.

6. Use of the Statement of Responsibility Certification Form in all procurements is not required.

(e) Making a Responsibility Determination.

1. The Contracting Officer may use the following sources of information to support determinations of responsibility or non-responsibility:

   (i) any governmental entity's listing of debarred, suspended, or ineligible contractors;

   (ii) records of evaluations of performance, as well as verifiable knowledge of agency business, contracting or audit personnel;

   (iii) determinations of violations of federal, state, or local law or executive order;

(iv) information supplied by the offeror, including bid or proposal information, Statement of Responsibility Certification Form replies, financial data, information on production equipment, and personnel information;

(v) pre-award survey or information reports;

(vi) personal knowledge of the contracting officer;

(vii) other sources such as offeror references, publications, contractors, subcontractors and customers of the offeror, financial institutions, other government agencies, and business and trade associations; and

(viii) any other publicly available information.

2. A Contracting Officer shall notify the offeror of unfavorable responsibility information and provide the offeror an opportunity to submit additional information or explanation before a final determination is made by the Contracting Officer.

(f) Determination of Non-Responsibility Required.

1. If an offeror who otherwise would have been awarded a contract is found non-responsible, a determination of non-responsibility setting forth the reasons for the finding of non-responsibility shall be prepared by the Contracting Officer.

2. Notice to the non-responsible offeror shall be mailed no later than two business days after the determination of non-responsibility is made and must inform the contractor of the right to contest the determination through the GTA Protest Procedure set forth in Rule 665-2-11-.07 within five (5) business days of receipt. A copy of the determination of non-responsibility should also be sent to the GTA Office of General Counsel (or its equivalent, by whatever name it is known).

3. The determination of non-responsibility shall be included in the record of the affected procurement.

(g) Protest of Non-Responsibility Determination.

1. Any dispute of a non-responsibility determination must be made via a Protest filed in strict accordance with the provisions of Rule 665-2-11-.07.

2. The protesting party shall have the burden of proving by clear and convincing evidence that there is no rational basis for the non-responsibility determination.

(h) Documentation. Documents reflecting the Contracting Officer's determination of non-responsibility and any Protest and decision with respect to such Protest, and evidence of having supplied written notifications as required by these Rules, shall be included in the record of the subject procurement.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.12
Authority: O.C.G.A. Secs. 50-25-4, 50-25-7.3.
History. Original Rule entitled "Offeror Responsibility" adopted. F. June 25, 2004; eff. July 15, 2004.

Rule 665-2-11-.13. Debarment and Suspension.

(a) Grounds for Debarment.

1. Grounds for debarment include the following acts or omissions on the part of the contractor or any of its officers, directors, partners, five percent shareholders, principals, or other person substantially involved in its activities:

(i) conviction under any state or federal law of any of the following:

(I) a criminal offense incident to obtaining, or attempting to obtain, or performing, a public or private contract;

(II) fraud, embezzlement, theft, bribery, forgery, falsification or destruction of records, or receiving stolen property;

(III) a criminal violation of any state or federal antitrust law;

(IV) violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. section 1961*et seq.*, or the Mail Fraud Act, 18 U.S.C. section 1341*et seq.*, for acts in connection with the submission of bids or proposals for a public or private contract;

(V) conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (IV) above; or

(VI) an offense indicating a lack of business integrity or business ethics that seriously and directly affects responsibility as a contractor;

(ii) judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract, or in the performance of such a contract;

(iii) arrears on any debt or contract with the State or without limitation, any of its departments, agencies, boards, bureaus, commissions, or authorities; default as surety or otherwise upon any obligation to the State or without limitation, any of its departments, agencies, boards, bureaus, commissions, or authorities; or arrears for taxes;

(iv) violation of contract provisions, as set forth below:

(I) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract, or

(II) unsatisfactory performance in connection with the terms of one or more contracts;

(v) debarment by another governmental entity or public authority;

(vi) damage or destruction to State property;

(vii) making or causing to be made any false, deceptive, or fraudulent material statement in any bid, proposal, or application for State or other government work, or in the performance of such work;

(viii) use of unauthorized subcontractors under a contract where subcontractor authorization is required;

(ix) refusal to cooperate with reasonable requests of GTA, Department of Audits, or other State inspectors or representatives with respect to work under the contract provisions, plans, or specifications;

(x) improper conduct, including but not limited to, intentional or grossly negligent billing irregularities, submitting false or frivolous or exaggerated claims, falsification of documents or records, willful destruction of documents or records the contractor had an obligation to maintain, bribery, use of false or deceptive statements to obtain some benefit, causing competition to be restrained or limited, misrepresentation, falsely claiming to be a minority- or woman-owned or small business, violation of ethical standards established by the State, and other dishonesty incident to obtaining, prequalifying for, or performing any contract or modification thereof; or

(xi) any other cause sufficiently serious and compelling that a reasonable person would seriously doubt the capability of the contractor to perform State procurement or service requirements.

2. A contractor may also be debarred if:

(i) it was founded or established, or operates in a manner designed, to evade the application or defeat the purpose of these Rules, or

(ii) it is a successor, assignee, subsidiary, or affiliate of a debarred contractor.

3. Imputed Conduct.

(i) The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to that contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(ii) The fraudulent, criminal, or other improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with that contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(iii) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to the other participating contractors if the conduct occurred for or on behalf of the joint venture or other similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) Procedure for Initiating Debarment Proceedings

1. An Agency may petition the GTA, requesting debarment proceedings be initiated as to any contractor or potential contractor. Such petition must set forth the facts that form the basis for the agency's belief that debarment is warranted.

2. GTA may, without limitation, independently initiate debarment proceedings as to any contractor or potential contractor. GTA shall reduce to writing the facts that form the basis for its belief that debarment is warranted.

3. Debarment proceedings may be initiated at any time.

4. The purpose of such debarment proceedings shall be to determine whether a contractor should be barred from consideration for the award of any procurement conducted under GTA's authority for a period not to exceed three years.

(c) Suspension Prior to Possible Debarment

1. After consultation with the GTA or agency procurement officer(s), and where practicable, the contractor who is to be suspended, and upon written determination by the Procurement Director that probable cause exists for debarment under these Rules, GTA may suspend a contractor.

2. A notice of suspension including a copy of such determination shall be sent to the suspended contractor. Such notice shall state that:

   (i) The suspension is for the period it takes to complete an investigation into possible debarment but not for a period in excess of 120 days.

   (ii) Bids or proposals will not be solicited from the suspended contractor, and, if they are received, they will not be considered during the period of suspension; and

   (iii) If contractor chooses to contest the suspension, Contractor must file a Protest of the suspension through the GTA Protest Procedure set forth in Rule 665-2-11-.07 within five (5) business days of receipt of the notice of suspension. In conjunction with any such Protest, Contractor may also request a hearing in accordance with Rule 665-2-11-.07.

3. A suspension of a contractor shall be effective for no longer than 120 days, unless debarment proceedings have been initiated by GTA within 120 days from the date of suspension. If proceedings have been initiated within this time frame, then the suspension shall be effective until the conclusion of the debarment proceedings. However, a delay of a debarment proceeding that is caused by a suspended contractor shall be deemed to be consent by that contractor to an extension of the suspension beyond the 120 day maximum. The period of such extension shall be equal to the period of such delay caused by the contractor. When an issue regarding delay is raised by either party, the contractor shall bear the burden of demonstrating that the delay was not caused by the contractor.

4. Protest of Suspension.

   (i) Any dispute of a suspension must be made via a Protest filed in strict accordance with the provisions of Rule 665-2-11-.07.

   (ii) The protesting party shall have the burden of proving by clear and convincing evidence that there is no rational basis for the suspension.

5. Effect of Decision. A contractor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any Protest or appeals. The suspension may be ended by the officer who issued the notice of suspension; by the GTA Executive Director; or by a court of law; but, otherwise shall only be ended when the suspension has been in effect for 120 days (unless a debarment proceeding has been delayed by contractor pursuant to Rule 665-2-11-.13(c)3) or a debarment decision has taken effect.

(d) Debarment Proceedings.

1. Written notice of the proposed debarment action shall be sent by certified mail, return receipt requested, to the contractor. This notice shall state that:

   (i) Debarment is being considered;

   (ii) The allegations, reasons or factual basis for the proposed debarment action;

   (iii) If contractor chooses to contest the proposed debarment, Contractor must file a Protest of the proposed debarment through the GTA Protest Procedure set forth in Rule 665-2-11-.07 within five (5) business days of receipt of the notice of proposed debarment. Such Protest must contain an admission, denial, or other response to each stated allegation, reason or factual basis for the proposed debarment. Any reason or basis not addressed may be deemed admitted. In conjunction with any such Protest, Contractor may also request a hearing in accordance with Rule 665-2-11-.07;

   (iv) If the contractor so requests, a hearing will be held; and,

   (v) The contractor may be represented by counsel.

2. Authority of Protest Decisionmaker conducting a Debarment Hearing. In addition to those powers set forth in Rule 665-2-11-.07, the Protest Decisionmaker, in the conduct of any debarment hearing, has the power, among others, to:

   (i) hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motions;

   (ii) Require parties to state their positions with respect to the various issues in the proceedings;

   (iii) Require parties to produce for examination those relevant witnesses and documents under their control;

   (iv) Rule on motions and other procedural items or matters pending before such officer;

   (v) Regulate the course of the hearing and the conduct of the participants therein;

   (vi) Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

(vii) Fix time limits for submission of written documents and matters before such officer;

(viii) Impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include, but are not limited to:

(I) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(II) Excluding all testimony of unresponsive or evasive witnesses; and

(III) Expelling any party or person from further participation in the hearing;

(ix) Take official notice of any material fact not appearing in the record if such fact is among the traditional matters of judicial notice;

3. Debarment Hearing Procedures.

(i) Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The weight to be attached to evidence presented in any particular form will be within the discretion of the Protest Decisionmaker. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if that witness were present. The Protest Decisionmaker may require evidence in addition to that offered by the parties.

(ii) The hearing may be recorded but need not be transcribed except at the request and expense of the contractor. A record of those present, identification of any written evidence, copies of all written statements, and a summary of the hearing shall be sufficient record.

(iii) Opening and/or closing statements may be made unless a party waives this right.

4. At any time before any debarment, the contractor and the petitioning agency (or GTA where it is the initiating entity of the debarment proceedings) may propose a formal or informal disposition agreement relating to the debarment, which if concurred with by GTA, may be grounds for the termination of the debarment action. Such proposed agreements may be conditioned upon the termination of the debarment action.

(e) Debarment Decisions.

1. The petitioning agency (or GTA where it is the initiating entity of the debarment proceedings) shall have the burden of proving by a preponderance of the evidence that there is sufficient reason to debar the contractor.

2. GTA may, in debarring a contractor, disqualify that contractor from: being awarded a procurement; performing as a subcontractor; providing supplies for a procurement; and/or, exercising a renewal option. GTA may impose such sanctions upon the contractor's activities with a single agency or any combination of agencies under GTA's statutory authority, and to a single type of procurement or any combination of procurement types. In determining the scope or period of a contractor's debarment, GTA may impose a time period and such conditions on the contractor's GTA related procurement activities as it considers appropriate, including, but not limited to, monitoring of the contractor's future procurement activities through GTA procurements.

3. A debarment decision shall take effect upon issuance. After the debarment decision takes effect, the contractor shall remain debarred until the debarment period specified in the decision expires or until GTA is provided with information it deems sufficient to indicate that contractor is rehabilitated and is likely to be a responsible bidder in accordance with Rule 665-2-11-.14.

4. At the time of debarment, or at any time thereafter, GTA or any agency may exercise its right to terminate for convenience an existing contract between that agency and the debarred contractor, or may prohibit any modification, extension, or renewal of any such contract. In such case, the contractor shall be entitled to receive and the terminating agency shall be obligated to pay only payment for the work performed until the point of termination.

(f) GTA List of Suspended and Debarred Contractors. A list of contractors currently suspended or debarred, including a summary of the scope of the suspension or debarment, shall be maintained by GTA. This list shall include the following information:

1. the name of the contractor and its principals,

2. the name of the agency that initiated the debarment proceeding,

3. the effective date and scope of the debarment or suspension, and

4. the termination date of the debarment.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.13
Authority: O.C.G.A. Secs. 50-25-4, 50-25-7.3.
History. Original Rule entitled "Debarment and Suspension" adopted. F. June 25, 2004; eff. July 15, 2004.

Rule 665-2-11-.14. Offeror Rehabilitation.

Offerors who have been debarred, may apply for a declaration of rehabilitation where such offeror has taken affirmative actions to remedy the facts or circumstances that lead to the debarment. Applications for a declaration of rehabilitation shall be filed with GTA's Procurement Director in accordance with this Rule. The decision to grant or deny such applications is within the discretion of the Procurement Director, as long as there is a rational basis for the decision. Decisions shall not be arbitrary or capricious.

(a) General Standards.

1. An application for a declaration of rehabilitation may be made by any offeror who has been suspended or debarred by GTA, if such offeror has either declined to protest or exhausted the processes set forth in Rule 665-2-11-.13.

2. A declaration of rehabilitation will not result in the expungement of the existing record documenting the suspension or debarment. A copy of the decision granting the requested declaration or denying the application shall be appended to the appropriate underlying records.

3. In instances where an offeror has been debarred, the restrictions and scope of the debarment decision shall remain in full effect until the debarment time limit has expired, UNLESS the Procurement Director renders a decision granting the application for declaration of rehabilitation effective earlier than the original debarment time limit.

(b) Time for Filing Application for Declaration of Rehabilitation.

1. The submission of an application for a declaration of rehabilitation shall not toll any time limits set forth for filing a Protest. If an offeror or contractor files a Protest, no application for a declaration of rehabilitation may be filed prior to the issuance by GTA of a final decision of the Protest or the withdrawal or abandonment of the Protest.

2. Debarred offerors may not file an application for a declaration of rehabilitation until 12 months have passed from the effective date of the debarment, or until the debarment time limit has expired, whichever is earlier. Furthermore, debarred offerors must wait at least twelve (12) months after a decision by the Procurement Director denying an application for a declaration of rehabilitation or until the expiration of the debarment time limit, whichever is earlier, before submitting another application for rehabilitation, unless the Procurement Director's decision expressly allows otherwise.

(c) Form and Content of Application. To apply for a declaration of rehabilitation, an offeror or contractor must submit a written filing to the Procurement Director in support of such

application. The filing in support of the rehabilitation application shall state how the applicant has demonstrated its responsibility for future procurement awards, and shall:

1. demonstrate that the issues leading to the debarment have been remedied by the applicant, and/or

2. to the extent that appropriate remedies or corrective action(s) require the agreement of GTA or a particular procuring agency, set forth the agreement of the applicant to implement such remedies or corrective actions should a declaration of rehabilitation by the Procurement Director so require.

(d) Remedies. Remedies or corrective actions may include, but are not limited to:

1. retaining an auditor, monitor, technical consultant or independent private sector inspector general to review the applicant's business practices, oversee its performance and/or develop specific remedies with respect to the subject matter of the debarment;

2. ownership changes and/or reorganizations of the legal structure of the applicant in a manner that appropriately remedies the issues raised in the debarment;

3. dismissing employees whose actions were the subject matter of the debarment;

4. entering into voluntary agreements with the GTA or other state entity prescribing corrective actions and/or otherwise appropriately remedying the subject matter of the debarment;

5. resolving judicial or administrative proceedings that were the subject matter of the debarment under terms demonstrating that such concerns have been appropriately remedied; or

6. engaging in any other lawful action leading to resolution of the issues that were the subject matter of the debarment, or demonstrating that any negative information that lead to the debarment has been appropriately remedied.

(e) Notice to Agencies. The applicant shall concurrently provide a copy of its application for rehabilitation to the GTA, and to the Contracting Officer (or equivalent or higher position) of any agency that requested debarment proceedings be initiated against the contractor.

(f) GTA Procurement Director Decision. The Procurement Director shall review the application and shall consult with all agencies copied in accordance with subparagraph (e) above, and may consult with any other relevant government agency, prior to making a final decision concerning the application for a declaration of rehabilitation. The Procurement Director may seek additional information from the applicant. Upon review of the application and any subsequent submission by the applicant, the Procurement Director shall issue a decision granting or denying the application for declaration of

rehabilitation based upon the adequacy of the remedies or corrective actions identified by the applicant, as well as its overall capacity to be a responsible contractor. The Procurement Director may condition any declaration of rehabilitation upon the applicant's completion of specific additional corrective actions. The Procurement Director's decision granting or denying the application for declaration of rehabilitation shall be final and is not subject to Protest or any other form of administrative review.

(g) Notification of Decision. A copy of the Procurement Director's decision granting or denying the application for declaration of rehabilitation shall be sent to the contractor and to the contracting officer of any agency that requested that debarment proceedings be initiated against such contractor.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.14
Authority: O.C.G.A. Secs. 50-25-4, 50-25-7.3.
History. Original Rule entitled "Offeror Rehabilitation" adopted. F. June 25, 2004; eff. July 15, 2004.

Rule 665-2-11-.15. Vendor Lobbyists.

All contractors who employ or retain one or more vendor lobbyists that actually lobby GTA or any other Agency for contracts shall cause such lobbyists to register with the State Ethics Commission and to file the disclosures required by Article 4 of Chapter 5 of Title 21 of the Official Code of Georgia Annotated. The GTA Executive Director is authorized to create policies and processes to verify that offerors or prospective offerors comply with this Rule and to effectuate any executive orders or statutes now or hereafter created in regards to Vendor Lobbyists.

Cite as Ga. Comp. R. & Regs. R. 665-2-11-.15
Authority: O.C.G.A. Sec. 50-25-7.3.
History. Original Rule entitled "Vendor Lobbyists" adopted. F. June 25, 2004; eff. July 15, 2004.

Subject 665-2-12. EXEMPTIONS, EMERGENCIES, AND SPECIAL DELEGATIONS.

Rule 665-2-12-.01. Exemptions.

The CIO or his designee may exempt products and services from purchase through GTA provided the CIO or his designee determines that no price or quality advantage would be gained by handling a particular acquisition through GTA.

Cite as Ga. Comp. R. & Regs. R. 665-2-12-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Exemptions" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-12-.02. Emergencies.

(1) An agency may make purchases of goods or services in the open market in cases of emergency or pressing need. For this purpose, a pressing need is one arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, unanticipated volume of work, or financial situations which result in the State incurring unreasonable expenses. Emergencies are defined as situations that endanger lives, property or the continuation of a vital program or unreasonably risk assets, as determined by the agency executive officer, and that can be rectified only by immediate, on-the-spot purchases or rental of goods or services.

(2) Agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions. If time permits, a solicitation document requesting or inviting an offer(s) may be issued, including standard language terms and conditions issued by GTA, unless circumstances prohibit their use.

(3) When emergency or pressing need action is necessary, and the expenditure is over the delegation, prior verbal approval shall be obtained from GTA if time permits. Subsequently, whether or not such prior approval was possible, if the expenditure is over the delegation, an explanation of the emergency or pressing need purchase shall be reported in writing to GTA.

Cite as Ga. Comp. R. & Regs. R. 665-2-12-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-7.6, 50-25-4.
History. Original Rule entitled "Emergencies" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-12-.03. Special Delegations.

(1) The CIO or his designee may authorize, by special delegation, any agency to purchase specific goods or services even if the expenditure exceeds the general delegation. Every such delegation shall be in writing and made a matter of record.

(2) The CIO or his designee may require that offers received under such delegations be sent to GTA for determination of the successful vendor.

(3) GTA shall periodically review its special delegations of purchase to ascertain the availability of these goods or services and their continued suitability for delegation.

Cite as Ga. Comp. R. & Regs. R. 665-2-12-.03
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Special Delegations" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-12-.04. Compliance Reviews.

(1) GTA shall be responsible for compliance reviews on technology purchasing practices at all agencies. The purpose of the compliance review shall be for determining if an agency is complying with GTA's purchasing statutes and rules adopted thereunder, and whether it should continue having the same level of delegation, have it reduced, or if it qualifies for an increase. A copy of the compliance report shall be provided to the agency's executive officer, and the State CIO.

(2) GTA staff may enter the premises and obtain an agency's purchasing records for the purpose of the compliance review. The agency shall cooperate with GTA staff, providing them with requested records, adequate office space for conducting the review and agency purchasing staff for discussion of purchase transactions. GTA shall not unnecessarily require of the agency any more than is needed to complete the review.

(3) The CIO may lower, or raise if requested, an agency's general delegation if the results of a compliance review by the compliance staff of GTA merit such action as determined by the CIO. The CIO may lower the delegation to any level, including the complete removal of the delegation, depending on the nature of any violations found.

(4) The CIO or his designee shall provide to each agency, upon request, GTA's assistance in educational training for the agency's staff to better acquaint them with GTA's purchasing statutes and rules.

Cite as Ga. Comp. R. & Regs. R. 665-2-12-.04
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Compliance Reviews" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Subject 665-2-13. RECORDS.

Rule 665-2-13-.01. Record Maintenance.

Except where state law provides to the contrary, after the award of a contract, the purchasing records of an agency are public documents, and these documents shall be maintained for a period of three years after the expiration date of the contract. Record retention shall be in accordance with the Georgia Records Act (O.C.G.A. § 50-18-90*et seq.*).

Cite as Ga. Comp. R. & Regs. R. 665-2-13-.01
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Record Maintenance" adopted. F. Apr. 16, 2001; eff. May 6, 2001.

Rule 665-2-13-.02. Records.

(1) The agency or GTA shall identify each paper or electronic contract record individually so it can be readily located and referenced.

(2) The agency or GTA shall document all purchase transactions. As applicable, each paper or electronic record shall include:

(a) Requisition;

(b) Required approval to proceed with acquisition;

(c) Original offers if in writing, or written documentation of verbal offers received;

(d) Worksheets/evaluations;

(e) Distribution list, if used;

(f) Written justification for waiver or emergency purchase;

(g) Evaluation of offers received;

(h) Copy of purchase order(s) or certification to agency authorizing placing of order;

(i) Related correspondence;

(j) Reason(s) for receiving only one offer in response to a solicitation;

(k) Negotiated contracts.

(3) After award of contract all material in the contract record, except confidential information, shall be open to interested persons, by appointment during normal office hours in accordance with the Georgia Open Records Act.

Cite as Ga. Comp. R. & Regs. R. 665-2-13-.02
Authority: O.C.G.A. Secs. 50-25-7.3, 50-25-4.
History. Original Rule entitled "Records" adopted. F. Apr. 16, 2001; eff. May 6, 2001.