APPENDIX C

HPC LEASE PROCUREMENT PROCEDURES

January 12, 2015

PURPOSE
The purpose of these Procurement Procedures ("Procedures") is to establish procedures for the procurement of the space lease associated with the High Performance Computing (HPC) project being sponsored by the Georgia Institute of Technology ("GIT").

DIRECTIVES
Compliance with these Procedures is required. However, in GIT's sole discretion, no proceeding under these Procedures will be voided because of a minor technical failure of compliance that GIT determines does not harm the substantive rights of GIT or any other party or otherwise adversely affects the integrity of GIT's procurement process.

Section 1: Method of Procurement

1.1 Competitive Process
The HPC Lease Procurement shall be made through a competitive process involving sealed bids or responses in a two-phase process.

Phase I is a Request for Qualifications (RFQ) process in which interested parties will submit a qualifications package for review by GIT. GIT will review the responses and select a short-list of those submissions it judges best meets the evaluation criteria set forth in the RFQ. The selected short-list of respondents will advance to Phase II.

Phase II is a Request for Proposals ("RFP"). An RFP is a formal solicitation that seeks to leverage the creativity and knowledge of business organizations in order to provide a solution to a procurement need. The RFP solicits technical and sealed price proposals from prospective vendors and seeks to obtain the "best value" for GIT. The RFP method does not use the cost of the project as the single determining factor, but rather uses a combination of lowest cost plus best-proposed solution to determine the award.

1.2 Public Notice

(a) All competitive solicitations related to the HPC Lease Procurement shall be posted on GIT’s HPC webpage located at www.realestate.gatech.edu/hpc and, at the option of GIT, may also be posted on the Georgia Procurement Registry.
(b) GIT, at its discretion, may elect to conduct additional public advertisement through a newspaper or other publication or in locations or publications that may be familiar with potential vendors for the goods or services needed.

(c) Within 72 hours of the procurement award, GIT shall post the award on GIT’s HPC website.

1.3 Sealed Bids

(a) To solicit competitive sealed bids, GIT will require the vendor to submit its bid in a sealed package. Faxed bids and emailed bids will not be considered sealed bids. Sealed bids shall not be opened until after the closing date and time of the applicable procurement.

(b) Bid Evaluation and Award

(i) Evaluation of Bids. Evaluation and award will be as set out in the solicitation document.

(ii) Alternate Bids. Alternate bids may be considered for an award in the discretion of GIT.

1.4 Competitive Sealed Responses and Proposals

All responses and proposals received by the closing date and time of the RFQ or RFP will be evaluated in accordance with the terms and conditions set forth in the RFQ or RFP as applicable.

Section 2: Clarifications, Discussions and Negotiations

Clarifications, discussions, and negotiations may be conducted on the HPC Lease Procurement in accordance with the following:

2.1 Clarifications

During both phases of the procurement process, GIT may seek clarifications from any offeror at any time.

2.2 Discussions

During both phases of the procurement process, GIT may conduct discussions collectively or one-on-one with offerors who are deemed qualified based on criteria set forth in the solicitation document. GIT may engage in one or more rounds of discussions for whatever purpose determined by GIT, including but not limited to (x) gaining a better understanding of an offeror’s proposed solution; (y) communicating GIT’s needs or concerns; or (z) communicating revisions and/or best and final offers.
2.3 Negotiations

During Phase II, the RFP phase, GIT may conduct negotiations with offerors who are deemed qualified and reasonably susceptible for award based on criteria set forth in the solicitation document. GIT may engage in one or more rounds of negotiations.

GIT will identify which offerors shall participate in the negotiations in one of the following ways:

(a) Identify in the solicitation document the methodology that will be used to identify offerors that may participate in negotiations. This may include, but is not necessarily limited to, a methodology that establishes a competitive range based on offerors' rankings following proposal evaluations.

(b) Identify in an addendum to the solicitation document the methodology that will be used to identify offerors that may participate in negotiations.

(c) Negotiate with all responsive responsible offerors following bid/proposal evaluations.

GIT may issue additional information and/or instructions to offerors participating in negotiations as needed. Negotiations may be completed after a single round, or may be done in several rounds as determined by GIT’s negotiation team.

After the negotiations, participating offerors may be asked to submit supplemental proposals defining the revisions that are a result of the negotiations. Any request for supplemental proposals will be directed in writing to all offerors participating in the negotiations, and will provide details concerning the format and due date for the supplemental proposals. GIT may in its sole discretion terminate negotiations and/or the solicitation at any time.

2.4 Negotiations in Lieu of New Procurement

If after evaluation and obtaining clarification of a bid or proposal in response to the RFP selection phase GIT determines that a bid or proposal is unreasonable or unacceptable, or is noncompetitive, or the low bid or highest scoring proposal exceeds available funds, GIT will determine in writing whether time or other circumstances will permit the delay required to re-solicit competitive bids or proposals. If GIT determines that the circumstances are such that the procurement cannot be delayed, a lease/contract may be negotiated provided that each responsible bidder or offeror who submitted a bid or proposal under the original RFP solicitation is notified of the determination and is given a reasonable opportunity to negotiate.
In cases where the bid/proposals received are noncompetitive or the low bid or highest scoring proposal exceeds available funds, the negotiated prices shall be lower than the lowest rejected bid/proposal of any responsible bidder/offeror under the original solicitation.

Section 3: Miscellaneous

3.1 Right to Examine Records

GIT shall have the right to examine, inspect and audit the records of bidder/proposer pertaining to any contract with GIT for a period of 3 years after the termination of the contract with GIT.

3.2 Cancellation of Requests for Quotes, Requests for Qualified Contractors/Concessionaires, or Requests for Proposals

The RFQ or RFP or other solicitation may be canceled, or any or all responses may be rejected in whole or in part as may be specified in the solicitation and which is in the best interest of GIT. Further, if at any time it is found that the integrity of the process has been compromised or that errors have occurred, the solicitation may be canceled.

3.3 Rejection of Bids/Proposals

GIT reserves the right to reject any and all bids/proposals submitted in response to any solicitation document, to reject any portion thereof, or to waive any irregularity or administrative requirement.

Section 4: Protests

Any person or entity desiring to protest, challenge, or otherwise pursue a claim against any aspect of the HPC Lease Procurement must comply with the attached HPC Lease Procurement Protest Procedure.

Section 5: Amendments

These Procedures may be amended, supplements, or cancelled at any time by GIT. GIT will publish notice of any such event on GIT’s HPC webpage located at www.realestate.gatech.edu/hpc.
1.0 Right to Protest

This procedure (the “Procedure”) describes the mandatory administrative process by which vendor/bidders/offerors may challenge the solicitation and/or award under either the RFQ phase or RFP phase of the HPC Lease Procurement Procedure (each phase being considered a “Solicitation”).

Any actual or prospective vendor, bidder, offeror, or contractor who is aggrieved in connection with the Solicitation shall have the right to file a protest. All protests shall be filed in the manner set out this Procedure.

The procurement officer (the “Procurement Officer”) responsible for administering this Procedure is Pamela Rary, Managing Attorney, Office of Legal Affairs.

2.1 Form of Protest and Filing Deadline

The protest must be in writing and signed by a company officer authorized to execute agreements on behalf of the protesting party or provided by an authorized legal representative of the protesting party. The protest must include the following information:

- Name, address, telephone number, and email address of the protestor;
- Identification of the solicitation by project name and project number;
- A concise statement of the reason(s) for the protest;
- Any supporting exhibits, evidence, or documents to substantiate the claim(s); and
- Desired remedy

The protest must be filed with the Procurement Officer via one of the following means:

Mail: Pamela Rary
Georgia Institute of Technology
Office of Legal Affairs
225 North Avenue
Atlanta, Georgia 30332-0255
3.0 Filing Deadline

Protests concerning either phase of the solicitation process, including claims related to the specifications, requirements, submissions, and evaluation criteria, must be filed no later than 5:00 p.m. Eastern time three (3) business days prior to the due date for the responses to the Solicitation.

Protests concerning the selection of qualified offerors under the request for qualified offerors portion of the Solicitation must be filed no later than 5:00 p.m. Eastern time five (5) business days after the posting of the notice of selection by GIT. Protests concerning the selection of a concessionaire under the request for proposals portion of the Solicitation must be filed no later than 5:00 p.m. Eastern Time five (5) business days after the posting of the notice of award by GIT. The notice of selection and the notice of award will be posted at the HPC Lease Procurement webpage located at:

www.realestate.gatech.edu/hpc

A protest shall be deemed filed at the time it is actually received by GIT at the physical address set forth in Section 2.0. Any protest that is filed after these time periods shall be deemed invalid provided that the Procurement Officer, in his or her sole and absolute discretion, may allow the supplementation of a timely filed protest after the expiration of the time period filing protests.

4.0 Protest Evaluation by the Procurement Officer

The Procurement Officer shall evaluate and make the initial determination of validity of the protest.

The Procurement Officer shall issue a written directive posted on the HPC Lease Procurement webpage with a copy sent to the protestor regarding whether to suspend further action on the Solicitation or implementation of the contract pursuant to the Solicitation within five (5) business days of receipt of the protest. If the Procurement Officer is unable to adequately review the protest within five (5) business days, a time for completion of the review by the Procurement Officer shall be provided in writing to the protestor within five (5) business days of the receipt of the protest.
5.0 **Exclusive Remedy**

This Procedure provides the exclusive process for asserting a claim arising out of or relating to the Solicitation.

6.1 **Hearing Procedures**

Any party submitting a protest pursuant to this Procedure may request a hearing. All such requests shall be submitted to the Procurement Officer in writing included in the protest and shall set out the reasons why the party submitting the protest believes that the protest raises issues that would be best resolved by holding a hearing. The Procurement Officer may, on his or her own motion, determine that a hearing should be held to resolve the protest. Should the Procurement Officer determine that the protest raises issues that would be best resolved by holding a hearing; the hearing shall be held within thirty (30) days following receipt of any request for a hearing. A notice that sets the time, date, and location of the hearing shall be mailed to the party or parties requesting the hearing at least seven (7) calendar days prior to the date of the hearing.

All hearings conducted under this Procedure will be conducted by the Procurement Officer or, at the sole discretion of the Procurement Officer, by a hearing officer designated by the Procurement Officer. The hearing officer’s actions, decisions, and orders will be deemed to be on behalf of the Procurement Officer and effective as though taken by the Procurement Officer, subject to the appeals procedures as provided below.

In connection with the hearing, the Procurement Officer or the hearing officer, if applicable, may:

1. Conduct the hearing in an informal manner without formal rules or evidence or procedure;
2. Hold pre--hearing conferences to:
   a. Settle, simplify, or identify the issues involved in the hearing; or
   b. Consider other matters that may aid in expeditious disposition of the hearing;
3. Require each protesting party to state, orally and/or in writing, its position concerning the various issues involved in the hearing;
4. Require each protesting party to produce for examination those relevant witnesses and documents under its control;
5. Rule on motions and other procedural items pending before him or her, including, without limitation, the methods, scope, and extent of discovery available to the protesting party;
6. Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;
7. Establish time limits for submission of motions or memoranda;
8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
9. Administer oaths or affirmations.

Any protesting party may request that the hearing be conducted before a court reporter. Such request must be in writing and include an agreement by the requesting party that it will procure at its own cost and on its own initiative the court reporting services for the hearing. To be a part of the record, the original transcript of the proceedings must be submitted to the Procurement Officer or the hearing officer as applicable as soon as the transcript is available but not later than ten (10) days after the conclusion of the hearing.

If the Procurement Officer conducts the hearing, he or she must render a decision in writing and send by mail, email, or hand delivery, copies of the decision to the protesting parties within thirty (30) days after the conclusion of the hearing. If a hearing officer conducts the hearing, he or she must provide a proposed decision to the Procurement Officer within thirty (30) days after the conclusion of the hearing. If a proposed written decision from the hearing officer is received by the Procurement Officer, he or she must render a decision in writing and deliver copies of the decision to the protesting parties within thirty (30) days after receiving the proposed written decision from the hearing officer. The Procurement Officer may accept the proposed written decision in whole or in part or may reject the proposed written decision and enter his or her own decision.

If the Procurement Officer determines that the protest is valid, the Procurement Officer shall determine the appropriate remedy. Available remedies include but are not limited to the following:

- Modification of the Solicitation document and extension of the Solicitation period
- Cancellation of the Solicitation
- Cancellation of the selection or award or contract

The written decision of the Procurement Officer shall be sent by mail, email, or hand delivery to all protesting parties. Any party is presumed to have received such decision from the Procurement Officer no later than the third business day following the date of such decision was mailed to the last known address of such party.

7.1 Decision by Procurement Officer Without a Hearing

If the Procurement Officer determines that no hearing is required to resolve the protest, the Procurement Officer will render a decision in writing on the protest and send by mail, email, or hand delivery, copies of the decision to the protesting parties.
within thirty (30) days of the filing of the protest.

If the Procurement Officer determines that the protest is valid, the Procurement Officer shall determine the appropriate remedy. Available remedies include but are not limited to the following:

- Modification of the Solicitation document and extension of the Solicitation period
- Cancellation of the Solicitation
- Cancellation of the selection or award or contract

The written decision of the Procurement Officer shall be sent by mail, email, or hand delivery to all protesting parties. Any party is presumed to have received such decision from the Procurement Officer no later than the third business day following the date of such decision was mailed to the last known address of such party.

8.0 Costs

In no event shall a protesting party be entitled to recover any costs incurred in connection with the protest of a solicitation or contract award, including but not limited to bid or proposal preparation costs, protest preparation costs, or attorneys’ fees.

9.0 Appeal of the Decision of the Procurement Officer

The protestor may appeal a decision of the Procurement Officer. The protesting party shall file a written appeal with the GIT Vice President, Legal Affairs and Risk Management after the Procurement Officer has issued a written decision and no later than five (5) business days after the receipt of the decision from the Procurement Officer. An appeal shall be deemed filed when it is actually received by the GIT Vice President, Legal Affairs and Risk Management at one of the addresses set forth below. Any appeal filed after the time period shall be deemed invalid.

Any appeal filed with the GIT Vice President, Legal Affairs and Risk Management shall be sent via any of the following means:

Mail: Patrick McKenna
VP, Legal Affairs and Risk Management
Georgia Institute of Technology
Office of Legal Affairs
225 North Avenue
Atlanta, Georgia 30332-0255

Hand Delivery: Patrick McKenna
VP, Legal Affairs and Risk Management
The GIT Vice President, Legal Affairs and Risk Management shall review the appeal. The Vice President, Legal Affairs and Risk Management or his or her designee may further investigate the claim and request additional information from the protestor or any source deemed helpful.

The Vice President, Legal Affairs and Risk Management shall issue a written determination either confirming or overturning the decision of the Procurement Officer within twenty (20) days after receipt of the appeal. The decision of the Vice President, Legal Affairs and Risk Management shall be the final decision of GIT.

10.0 Judicial Review

The final decision by GIT shall be subject to judicial review by any person or entity who was a party to the protest and the petition for certiorari seeking review must be filed with the Superior Court of Fulton County in accordance with Chapter 5 of Title 5 of the Official Code of Georgia and served on GIT within the time prescribed by Georgia law. The complete exhaustion of this Procedure is a prerequisite to the commencement of an action seeking review. In the absence of such complete exhaustion, any petition seeking review of the final decision shall be barred.