

**CONTRACT AWARD PROTEST PROCEDURE FOR
CONTRACT AWARDS BY THE OFFICE OF THE STATE COMPTROLLER**

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Section 1 Applicability

The intent and purpose of these guidelines is to set forth the procedure to be utilized when an interested party challenges a contract award by the Office of the State Comptroller ("OSC"). These guidelines shall apply to all contract awards by OSC, including sole source procurements, single source procurements, emergency procurements and procurements awarded after a mini-bid process.

Section 2 Definitions

(a) "Back drop contract" means a contract consisting of a pool of prequalified vendors who are eligible to participate in a secondary mini-bid award process, or other specified selection process.

(b) "Emergency" means an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk (see State Finance Law §163(1)(b)).

(c) "Interested party" means a participant in the procurement process and those whose participation in the procurement process has been foreclosed by the actions of OSC.

- (d) "Mini-bid process" is an abbreviated bid and selection process for individual agency projects utilizing a list of prequalified vendors on a back drop contract.
- (e) "Contract award" is a written determination from OSC to an offerer indicating that OSC has accepted its bid or offer (see State Finance Law §163(10)(a)).
- (f) "Protest" means a written challenge to a contract award by OSC.
- (g) "Comptroller" means the Comptroller of the State of New York, as well as his or her designee.
- (h) "Single source" means a procurement in which, although two or more offerers can supply the required commodities or services, OSC, upon written findings setting forth the material and substantial reasons therefor, awards the contract to one offerer over the other (see State Finance Law §163(1)(h)).
- (i) "Sole source" means a procurement in which only one offerer is capable of supplying the required commodities or services (see State Finance Law §163(1)(g)).
- (j) "Successful bidder" means the offerer which receives written notification from OSC indicating that its bid or offer has been accepted.

Section 3 General Requirements

(a) Any solicitation issued by OSC with respect to a contract award subject to these guidelines, including an Invitation for Bid, a Request for Proposal, or other similar document, shall provide notice that any interested party may protest the contract award. Such notice shall indicate that a protest of a contract award is to be filed with the OSC Director of Financial Administration at Office of the State Comptroller, 110 State Street, Stop13-2, Albany, NY 12236. The solicitation must

include a copy of these guidelines, or advise bidders that a copy of these guidelines will be provided to the bidder upon request.

(b) All bidders shall be given written notice of the contract award. Any unsuccessful bidder, upon request, must be afforded an opportunity for a debriefing at least five business days prior to the date by which any protest must be filed. Notwithstanding the foregoing, in any case where OSC has reduced the time period for the filing of a protest in accordance with section 4(a) of these guidelines, OSC shall provide in the solicitation for a reasonable and appropriate method to debrief the bidders in a timely manner.

A bidder's failure to request a debriefing in a timely fashion shall not cause an extension of the time period within which a protest must be filed.

(c) A protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by OSC.

(d) Any interested party will be given the opportunity to participate in the protest procedure.

(e) The OSC Director of Financial Administration may, in his or her sole discretion, waive any deadline or requirement set forth in these guidelines, or consider any materials, submitted in writing, beyond the time periods set forth in these guidelines.

(f) Where the OSC Director of Financial Administration deems appropriate, the OSC Director of Financial Administration may require the protesting party, the procuring Division of OSC, OSC staff involved in the procurement, the successful bidder, or any other interested party, to address and/or submit further information with respect to additional issues raised by the OSC Director of Financial Administration's review of the procurement.

(g) Nothing herein shall preclude the OSC Director of Financial Administration from obtaining information relevant to the procurement from any other source, as he or she deems

appropriate.

Section 4 Protest Procedure

(a) Any interested party may file a protest with the OSC Director of Financial Administration within fifteen business days from the date of the notice of the contract award, except:

- (i) any protest concerning the terms and conditions of the solicitation (or other matters that would be apparent to an interested party prior to the date set in the solicitation for the receipt of bids) must be filed on or before the date set in the solicitation for the receipt of bids or proposals; or
- (ii) where OSC determines that sufficient circumstances exist and has set forth a different time period for filing protests in the solicitation.

Any filing deadlines may be waived by the OSC Director of Financial Administration pursuant to section 3(e) of these guidelines.

(b) The OSC Director of Financial Administration shall refer any protest either to an individual employee, or group of employees of OSC, or to an independent hearing officer who is not an employee of OSC. Where the protest is referred to an OSC employee or group of employees of OSC, no such employee will have been actively involved in the procurement process being protested.

(c) The OSC Director of Financial Administration will provide a copy of any protest filed to the successful bidder.

(d) The OSC Director of Financial Administration may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest raises only issues of law that have already been decided by the courts or the OSC Director of Financial Administration.

(e) Except where the OSC Director of Financial Administration summarily rejects the protest, the procuring Division of OSC shall file an answer to the protest within seven business days

of the filing of the protest. The answer to the protest should address all the factual and legal allegations contained in the protest. A copy of the answer filed by the procuring Division of OSC shall be simultaneously delivered to the protester and the successful bidder. The successful bidder may, but shall not be required to, file an answer to the protest. Any answer by the successful bidder must be filed with the OSC Director of Financial Administration no later than the date that the procuring Division of OSC is required to file its answer. If the successful bidder chooses to file an answer, it must simultaneously deliver a copy of such answer to the procuring Division of OSC and the protester, and its answer must contain an affirmation as to such delivery.

(f) The protesting party may, but is not required to, file a reply to the answer of the procuring Division of OSC and the successful bidder. Such reply shall be filed with the OSC Director of Financial Administration no later than three business days after the date that the procuring Division of OSC's answer is filed. A copy of such reply shall be simultaneously delivered to the successful bidder, and the protester's reply must contain an affirmation as to such delivery.

(g) Upon the OSC Director of Financial Administration's own initiative, or upon request of any participant in the protest process, the OSC Director of Financial Administration may in his or her sole discretion act on an expedited basis, upon written notification to the interested parties, in which case the OSC Director of Financial Administration will advise all participants of filing deadlines.

(h) During the time period in which a protest may be filed, or during the resolution of a pending protest, OSC may negotiate terms and conditions of the contract with the successful bidder. However, a contract will not be approved by the OSC Bureau of Contracts before the expiration of the time period for filing a protest, or, if a protest has been filed, before the resolution of the protest.

(i) The person or persons designated by the OSC Director of Financial Administration to consider the protest shall determine whether it is necessary to conduct a fact-finding hearing. The

person or persons so designated shall decide the level of formality of such a hearing.

(j) The person or persons designated by the OSC Director of Financial Administration to consider the protest shall prepare a written recommendation to the OSC Director of Financial Administration, or his or her designee, addressing all of the issues that have been raised by the protest.

(k) The OSC Director of Financial Administration, or his or her designee, may accept, modify or reject such recommendation.

(l) In making his or her determination with regard to the protest, the OSC Director of Financial Administration, or his or her designee, may, in his or her sole discretion, consider any additional information from any source relating to the allegations set forth in the protest.

(m) All parties that have participated in the protest, as well as the original successful bidder, shall be provided with a copy of the final determination of the OSC Director of Financial Administration, or his or her designee. The determination shall be made part of the procurement record.

Section 5 Appeal

Upon receipt of the OSC Director of Financial Administration's determination of a protest, an interested party has ten business days to file an appeal of the determination with the OSC Bureau of Contracts. The procedure for any such appeal shall be governed by Section 4 of the OSC Guidelines entitled "CONTRACT AWARD PROTEST PROCEDURE FOR CONTRACT AWARDS SUBJECT TO THE COMPTROLLER'S APPROVAL." In such a case, the Director of Financial Administration shall have the rights and obligations provided in Section 4 of such Guidelines for a "contracting agency."

Section 6 Notice and Filing

Any "notice" or "filing" required under these guidelines shall be in writing and shall be effective when actually received by the party for whom intended.