

**CONTRACT AWARD PROTEST PROCEDURE
FOR CONTRACT AWARDS SUBJECT TO THE COMPTROLLER’S APPROVAL**

Section 1	Applicability
Section 2	Definitions
Section 3	Initial Protest Filed with the Office of the State Comptroller
Section 4	Appeal of Agency Protest Determination
Section 5	Notice and Filing

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 a State agency which is subject to the approval of the Office of the State Comptroller (“OSC”) pursuant to the provisions of Section 112 of the State Finance Law, or is otherwise submitted to OSC for its approval. These guidelines shall apply to all contract awards subject to the approval of OSC pursuant to the provisions of Section 112 of the State Finance Law, or otherwise submitted to OSC for its approval, including, but not limited to, sole source procurements, single source procurements, emergency procurements, procurements awarded after a mini-bid process and contract amendments.

In light of the restrictions on “contacts” under the Procurement Lobbying Law (State Finance Law, Section 139-j), please note that any protest or appeal filed with OSC must be in writing and may only be filed after the procuring agency has made a contract award.

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, Section 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 the contracting agency.

(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 a contracting agency to an offerer indicating that the contracting agency has accepted its bid or offer.

**CONTRACT AWARD PROTEST PROCEDURE
FOR CONTRACT AWARDS SUBJECT TO THE COMPTROLLER’S APPROVAL**

(f) "Contracting agency" means a State agency which is awarding, or has awarded a contract as part of a procurement which the State agency has conducted.

(g) "Protest" means a written challenge by an interested party to a contract award, which is subject to the approval of OSC pursuant to the provisions of Section 112 of the State Finance Law, or is otherwise submitted to OSC for its approval.

(h) "Single source" means a procurement in which, although two or more offerers can supply the required commodities or services, the State agency, upon written findings setting forth the material and substantial reasons therefor, awards the contract to one offerer over the other (see State Finance Law, Section 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, Section 163(1)(g)).

(j) "State agency" means: (i) all State departments, boards, commissions, officers or institutions, as well as the City University of New York; and (ii) any public authority, public benefit corporation, or other public or quasi-public entity that submits its contracts to OSC for its approval.

(k) "Successful bidder" means the bidder or offerer whose bid or offer a contracting agency proposes to accept.

(l) "OSC" means the New York State Office of the State Comptroller.

Section 3 Initial Protest Filed with the Office of the State Comptroller

(a) Where the contracting agency has a protest procedure and has provided notice of such procedure in the solicitation documents, a protest should be filed initially with the contracting agency. However, an interested party may file an initial protest with the OSC Bureau of Contracts, in accordance with this Section 3, after the contracting agency has made a contract award with respect to such procurement and: (i) the contracting agency does not have a written protest procedure; or (ii) the contracting agency has not provided notice of such protest procedure in the solicitation documents; or (iii) the facts that would give rise to a protest are not known to, and could not have been reasonably known to, an interested party prior to the date by which a protest was required to be filed with the contracting agency.

(b) The protest to the OSC Bureau of Contracts 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 the contracting agency. The protest must be filed with:

Charlotte Breeyear, Director
Bureau of Contracts
New York State Office of the State Comptroller
110 State Street, 11th Floor

**CONTRACT AWARD PROTEST PROCEDURE
FOR CONTRACT AWARDS SUBJECT TO THE COMPTROLLER'S APPROVAL**

Albany, NY 12236.

(c) Where an interested party that wants to file an initial protest with the OSC Bureau of Contracts under these guidelines was provided notice of a contract award, the interested party must file the protest with the OSC Bureau of Contracts within ten business days of notice of the contract award with respect to such procurement. If the interested party is not provided notice of the contract award, the interested party may file a protest with the OSC Bureau of Contracts at any time after the contract award and prior to the OSC Bureau of Contracts' approval of the contract. The protesting party must simultaneously deliver a copy of the protest to the contracting agency and the successful bidder, if the protesting party knows the identity of the successful bidder, and must attach to its protest an affirmation in writing as to such delivery. If the protesting party does not know the identity of the successful bidder, the protesting party shall so state in its affirmation and the OSC Bureau of Contracts shall provide the successful bidder with a copy of the protest. Any filing deadlines may be waived by the OSC Bureau of Contracts as provided in Section 3(i) of these guidelines.

(d) The contracting agency may file an answer to the protest with the OSC Bureau of Contracts simultaneously with the delivery of the contract to the OSC Bureau of Contracts for its review, or within seven business days of the filing of the protest, whichever is later. The contracting agency's answer should address all factual and legal allegations contained in the protest. A copy of the contracting agency's answer shall be simultaneously delivered to the protester and the successful bidder, and the contracting agency's answer shall affirm such delivery in writing. The successful bidder may, but is not required to, file an answer to the protest with the OSC Bureau of Contracts. Any answer by the successful bidder must be filed with the OSC Bureau of Contracts no later than the date that the contracting agency 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 contracting agency and the protester, and affirm in writing to such delivery in its answer. Any filing deadlines may be waived by the OSC Bureau of Contracts as provided in Section 3(i) of these guidelines.

(e) The protesting party may, but is not required to, file a reply to the answer of the contracting agency and the successful bidder. Such reply shall be filed with the OSC Bureau of Contracts no later than three business days after the date that the contracting agency's answer is filed. A copy of such reply shall be simultaneously delivered to the contracting agency and the successful bidder, if the successful bidder has filed an answer to the protest, and the protester's reply must contain an affirmation as to such delivery.

(f) Upon the OSC Bureau of Contracts' own initiative, or upon request of any participant in the protest process, the OSC Bureau of Contracts may in its sole discretion act on an expedited basis, upon written notification to the interested parties, in which case the OSC Bureau of Contracts will advise all participants of filing deadlines. Any filing deadlines may be waived by the OSC Bureau of Contracts as provided in Section 3(i) of these guidelines.

(g) The OSC Bureau of Contracts 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 by the OSC Bureau of Contracts.

**CONTRACT AWARD PROTEST PROCEDURE
FOR CONTRACT AWARDS SUBJECT TO THE COMPTROLLER'S APPROVAL**

(h) The OSC Bureau of Contracts shall determine whether it deems it necessary to conduct a fact-finding hearing, and the level of formality for any hearing conducted.

(i) The OSC Bureau of Contracts may, in its sole discretion, waive any deadline or requirements set forth in these guidelines or consider any materials, submitted in writing, beyond the time periods set forth in these guidelines.

(j) Where the OSC Bureau of Contracts deems it appropriate, the OSC Bureau of Contracts may require the contracting agency, the protesting party, the successful bidder, or any other interested party, to address additional issues raised by the OSC Bureau of Contracts and submit further information regarding the procurement.

(k) Nothing herein shall preclude the OSC Bureau of Contracts from obtaining information relevant to the procurement from any outside source, as it deems appropriate.

(l) The OSC Bureau of Contracts shall issue a written determination addressing all issues raised by the protest, as well as any relevant issues raised by its review of the procurement or contract. The determination shall make findings of fact and conclusions of law on any issues in dispute. All participants in the protest and the successful bidder shall be provided a copy of the determination. The determination shall be made part of the procurement record.

Section 4 Appeal of Agency Protest Determination

(a) Upon receipt of the contracting agency's determination of a protest, an interested party has ten business days to file an appeal of the contracting agency's determination with the OSC Bureau of Contracts. The appeal must be filed with:

Charlotte Breeyear, Director
Bureau of Contracts
New York State Office of the State Comptroller
110 State Street, 11th Floor
Albany, NY 12236.

The interested party's appeal must contain an affirmation in writing that a copy of the appeal has been served on the contracting agency, the successful bidder (except where the contracting agency upholds the protest and the successful bidder is the appealing party) and any other party that participated in the protest conducted by the contracting agency. In the event no appeal is filed, the OSC Bureau of Contracts will nevertheless review the contracting agency's determination as part of its review of the contract under Section 112 of the State Finance Law. Any filing deadlines may be waived by the OSC Bureau of Contracts as provided in Section 4(e) of these guidelines.

(b) In its appeal, the interested party shall set forth the basis on which it challenges the contracting agency's determination.

**CONTRACT AWARD PROTEST PROCEDURE
FOR CONTRACT AWARDS SUBJECT TO THE COMPTROLLER'S APPROVAL**

(c) The contracting agency may file an answer to the appeal with the OSC Bureau of Contracts simultaneously with the delivery of the contract to the OSC Bureau of Contracts for its review, or within seven business days of the filing of the protest, whichever is later. A copy of the contracting agency's answer shall be simultaneously delivered to the protester and the successful bidder, and the contracting agency's answer must contain an affirmation of such delivery in writing. The successful bidder may, but is not required to, file an answer to the appeal with the OSC Bureau of Contracts. Any answer by the successful bidder shall be filed with the OSC Bureau of Contracts no later than the date that the contracting agency 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 contracting agency and the protester, and its answer must contain an affirmation of such delivery in writing. Any filing deadlines may be waived by the OSC Bureau of Contracts as provided in Section 4(e) of these guidelines.

(d) The OSC Bureau of Contracts shall evaluate the merits of the protest, the contracting agency's determination and any response submitted by an interested party.

(e) The OSC Bureau of Contracts may, in its sole discretion, waive any deadline or requirements 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 Bureau of Contracts deems it appropriate, the OSC Bureau of Contracts may require the contracting agency, the protesting party, the successful bidder, or any other interested party, to address additional issues raised by the OSC Bureau of Contracts and submit further information regarding the procurement.

(g) Nothing herein shall preclude the OSC Bureau of Contracts from obtaining information relevant to the procurement from any outside source, as it deems appropriate.

(h) The OSC Bureau of Contracts shall determine whether it deems it necessary to conduct a fact-finding hearing, and the level of formality of any hearing conducted.

(i) The OSC Bureau of Contracts shall issue a written determination addressing the issues raised by the appeal. All interested parties shall be provided with a copy of the determination. The determination shall be made part of the procurement record.

Section 5 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 who intended.