

**PROTEST AND DEBRIEFING PROCEDURE FOR
COMPETITIVE AWARDS BY THE NEW YORK STATE OFFICE FOR THE AGING**

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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 or grant awarded by the New York State Office for the Aging ("NYSOFA") pursuant to a competitive process. These guidelines shall apply to all competitive contracts or grants awarded by NYSOFA, including sole source procurements, single source procurements, emergency procurements, procurements awarded after a mini-bid process, and competitive requests for applications. This procedure is not applicable to non-competitive grants.

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 or grant award process and those whose participation in the procurement or grant award process has been foreclosed by the actions of NYSOFA.

(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 NYSOFA to a vendor or grantee indicating that NYSOFA has accepted its bid or offer (see State Finance Law §163(10)(a)).

(f) "Protest" means a written challenge to a contract or grant award by NYSOFA.

(g) "Debriefing" means the opportunity afforded an unsuccessful vendor that responded to a NYSOFA request for proposals or a request for applications regarding the reasons that the proposal or bid submitted by the unsuccessful vendor was not selected for an award.

(h) "Director" means the Director of NYSOFA, as well as his or her designee.

(i) "Single source" means a procurement in which two or more vendors can supply the required commodities or services but NYSOFA awards the contract to one vendor over the other based upon material and substantial reasons which are set forth in writing. (See State Finance Law §163(1)(h)).

(j) "Sole source" means a procurement in which only one vendor is capable of supplying the required commodities or services (see State Finance Law §163(1)(g)).

(l) "Bidder" means the person or organization submitting a proposal under a process for procurement of goods or services. For purposes of this procedure, the term "bidder" shall also refer to an applicant for grant awards under a request for applications process.

(k) "Successful bidder" means the person or organization which receives written notification from NYSOFA indicating that its bid, offer, or application has been accepted. Throughout this procedure, the term "successful bidder" shall also refer to the successful applicant for grant awards under a request for applications process.

(l) "Unsuccessful bidder" means any person or organization that submits a bid or proposal which is not accepted by NYSOFA. Throughout this procedure, the term "unsuccessful bidder" shall also refer to the unsuccessful applicants for grant awards under a request for applications process.

Section 3 Notice and Filing

Any "notice" or "filing" required under these guidelines shall be in writing and shall be effective when received by the party for whom it is intended. A party is deemed to have received a notice or filing no later than five (5) days after mailing if sent by U.S. Postal service or on the same day as it is transmitted if sent by e-mail, unless a party can prove receipt occurred otherwise. NYSOFA recommends that any notices sent via US Postal Service should be sent "Certified Mail, Return Receipt Requested."

Section 4 General Requirements

(a) Any solicitation issued by NYSOFA with respect to a contract award subject to these guidelines, including an Invitation for Bid, a Request for Proposal, a Request for Application, 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 Director of the New York State Office for the Aging at 2 Empire State Plaza, Albany, NY 12223-1251. The solicitation must include a copy of this procedure, or advise bidders that a copy of this procedure will be provided to the bidder upon request.

(b) All bidders shall be given written notice of the contract or grant award. The notice of contract or grant award will state the date and method of any debriefing and the date by which a protest must be filed. (See, Sections 5 and 6 below.)

(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 NYSOFA.

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

(e) The Director may, in his or her 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) The Director may require the protesting party, the NYSOFA Division of Finance and Administration (DFA), staff involved in the procurement, the successful bidder, or any other interested party to submit such additional information he or she deems appropriate to make a determination with regard to the protest.

(g) Nothing herein shall preclude the Director from obtaining information relevant to the procurement from any other source, as he or she deems appropriate to make a determination with regard to the protest.

Section 5 Debriefing Procedure

(a) NYSOFA will provide unsuccessful bidders with an opportunity for a debriefing at least five business days prior to the date by which any protest must be filed.

(b) Any unsuccessful bidder may avail itself of an opportunity for a debriefing by notifying NYSOFA as soon as possible after receiving the written notification of the contract award but no later than close of business the day before the scheduled debriefing.

(c) Notwithstanding the foregoing, in any case where NYSOFA has reduced the time period for the filing of a protest in accordance with section 4(a) of these guidelines, NYSOFA shall provide for a reasonable and appropriate method to debrief the bidders in a timely manner.

(d) 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.

(e) A debriefing will be limited to a review of an unsuccessful bidder's own submission and the scoring of that submission. An unsuccessful bidder is not entitled to review the submission of the successful bidder beyond being informed of the total scoring of the successful bidder.

Section 6 Protest Procedure

(a) Any interested party may file a protest with the Director 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 NYSOFA determines that sufficient circumstances exist and has set forth a different time period for filing protests. Any filing deadlines may be waived by the Director pursuant to section 4(e) of these guidelines.

(b) The Director shall refer any protest either to an individual employee, or group of employees of NYSOFA. No such employee will have been actively involved in the procurement process being protested.

- (c) The Director will provide a copy of any protest filed to the successful bidder.
- (d) The Director 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.
- (e) The Director shall issue a determination within seven (7) 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 shall be simultaneously delivered to the protester and the successful bidder.
- (f) During the time period in which a protest may be filed, or during the resolution of a pending protest, NYSOFA may negotiate terms and conditions of the contract or grant award with the successful bidder. However, a contract or grant award will not be approved by the Director prior to the expiration of the time period for filing a protest, or, if a protest has been filed, before the Director issues a determination of the protest.
- (g) The person or persons designated by the Director to consider the protest shall prepare a written recommendation to the Director, or his or her designee, addressing all of the issues that have been raised by the protest.
- (h) The Director, may accept, modify or reject such recommendation.
- (i) In making his or her determination with regard to the protest, the Director, 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.
- (j) 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 Director. The determination shall be made part of the procurement or grant award record.

Section 7 Appeal

- (a) All parties receiving a copy the Director's final determination will also receive a copy of the current "Contract Award Protest Procedure For Contract Awards Subject To The Comptroller's Approval." This document explains the time periods and procedure for filing a protest with the Office of the State Comptroller.
- (b) An interested party has ten (10) business days from the date it receives the Director's determination to file an appeal with the Bureau of Contracts in the Office of the State Comptroller.