NYSOFA Solicitation - Bid Protest language

Section \_\_\_\_ - Procedures for Handling of Protests/Appeals of Bid Specifications and Pending Awards

1. Formal Written Protests
2. Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. Any potential applicant or Offerer who believes that there are errors or omissions in the procurement process or who otherwise has been aggrieved in the drafting or issuance of a bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to the NYSOFA and request administrative relief concerning such action ("formal protest").
3. A formal protest must be submitted in writing to the NYSOFA, by means of the United States Post Office, first class mail, or by electronic mail (e-mail), except where alternate arrangements have been made, to the Director of the New York State Office for the Aging, at 2 Empire State Plaza, 5th Floor, Albany, NY 12223-1251.
4. A formal protest must include a statement of all legal and/or factual grounds for disagreement with a NYSOFA specification or procurement decision; a description of all remedies or relief requested; and copies of all applicable supporting documentation.
5. Deadline for Submission of Formal Protests
6. NYSOFA must receive formal protests concerning errors, omissions or prejudice including patently obvious errors in the bid specifications or solicitation documents, at least ten (10) calendar days before the date set in the solicitation for receipt of proposals or application.
7. NYSOFA must receive formal protests concerning an award of contract: (1) within ten (10) calendar days following the date upon which a non-select letter is mailed or emailed to a Offerer; or 2) if the protesting party did not submit a bid, proposal or application in response to the solicitation, then within ten (10) calendar days from the date the party knew or should have known of the facts which form the basis of the protest (together hereinafter referred to as the "Protester").
8. Review and Final Determination of Protests
9. Protests will be resolved through written correspondence. However, the Protester may request a meeting to discuss a formal protest or NYSOFA may initiate a meeting on its own motion, at which time the participants may present their concerns. Either the Protester or the NYSOFA may elect to decline such a meeting, without prejudice.
10. Where a formal decision is required, the Director may designate a NYSOFA employee (“designee”) to review the procurement record, the materials presented by the Protester and/or any materials required of or submitted by other Offerers, consult with agency counsel, and draft a proposed determination of the protest, addressing all of the issues that were raised by the protest.
11. The Director (or designee) will conduct a review of the records involved in the protest, including but not limited to a review of the materials presented by the protesting party and/or any materials required of or submitted by other Offerers. The Director (or designee) will provide a written decision, summarizing the facts as presented by the parties, an analysis of the substance of the protest, and a decision based upon those facts and analysis. The Director (or designee) may consult with agency Counsel.
12. A copy of the protest decision, stating the reason(s) upon which it is based and informing the Protester of the right to appeal an unfavorable determination to the Office of the State Comptroller (OSC), shall be sent to the Protester or its agent within forty-five (45) calendar days of receipt of the protest, except that upon notice to the Protester such period may be extended. The protest determination will be recorded and included in the procurement record, or otherwise forwarded to OSC upon issue.
13. Appeals
14. Upon receipt of NYSOFA’s bid protest determination, the Protester has ten (10) business days to file an appeal of that determination with the OSC Bureau of Contracts. The appeal must be filed with:

Bureau Director

at bidprotests@osc.state.ny.us or

Bureau of Contracts

New York State Office of the State Comptroller

110 State Street, 11th Floor,

Albany, New York 12236.

1. The Protester’s appeal must contain an affirmation in writing that a copy of the appeal has been served on NYSOFA, the successful Offerer or applicant (except where the successful Offerer or applicant is the appealing party) and any other party that participated in the protest. In its appeal, the Protester shall set forth the basis on which it challenges the NYSOFA’s determination. The OSC Bureau of Contracts will review the allegations raised in the protest and the contracting agency’s determination.
2. Reservation of Rights and Responsibilities of the NYSOFA. The NYSOFA reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and NYSOFA. If the NYSOFA determines that there are compelling circumstances, including the need to proceed immediately with the contract award in the best interest of the State, then these protest procedures may be suspended and such decision shall be documented in the procurement record. The NYSOFA reserves the right to consider all information relevant to the protest, from any source, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of contract award prior to issuance of a final agency determination.
3. Procurement Activity Prior to Final Protest Activity
   1. Receipt of a formal bid protest shall not stay action on a procurement unless otherwise determined by the NYSOFA. If a formal protest or appeal is received by the NYSOFA on a recommended award prior to the underlying contract being forwarded to OSC, notice of receipt of the protest and appeal must be included in the procurement record forwarded to the OSC. If a final protest determination has been reached prior to transmittal to the OSC, a copy of the final agency decision must be included in the procurement record and forwarded with the recommendation for award.
4. If a final agency determination is made after the transmittal of a bid package to the OSC, but prior to the OSC approval under State Finance Law § 112, a copy of the final agency determination shall be forwarded to the OSC when issued, along with a letter either: (a) confirming the original NYSOFA recommendation for award and supporting the request for final § 112 approval; or (b) modifying the proposed award recommendation in part and supporting a request for final § 112 approval as modified; or (c) withdrawing the original award recommendation.
5. Record Retention of Bid Protests - All records related to formal protests and appeals shall be retained for at least one (1) year following resolution of the protest. All other records concerning the procurement shall be retained according to the statutory requirements for records retention.