**BID PROTEST and APPEAL PROCEDURES**  
**FOR CONTRACT AWARDS**  
**BY THE NEW YORK STATE OFFICE FOR THE AGING**

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**Section 1 Applicability**

It is the policy of the New York State Office for the Aging (“NYSOFA”) to provide all interested parties (as defined in Section 2 below) with an opportunity to administratively resolve complaints or inquiries related to the conduct of a solicitation (i.e., request for proposals (RFPs) or request for applications (RFAs), etc.) or pending contract awards. NYSOFA encourages all interested parties to seek resolution of complaints concerning the contract award process through consultation with NYSOFA. All such matters will be accorded impartial and timely consideration.

The following are NYSOFA’s procedures for handling of bid protests and appeals. This protest procedure may be used by an interested party (as defined in Section 2) to challenge a contract or grant with an initial contract value of over $50,000.00, awarded by NYSOFA pursuant to a competitive process, sole source procurements, single source procurements, emergency procurements, procurements awarded after a mini-bid process, and contract amendments. These procedures are not applicable to non-competitive grants.

**Section 2 Definitions**

1. "Back drop contract" means an Office of General Services' centralized 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 (see State Finance Law §163 (10)(f)).
2. “Contract selection and/or award" is a written determination by NYSOFA in the procurement record consistent with the provisions of the solicitation (see State Finance Law §163(10)(a)).
3. “Director" means the Director of NYSOFA, as well as his or her designee.
4. "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]).
5. "Interested party" means a participant in the procurement or grant award process, and those who can establish that their participation in the procurement or grant award process was foreclosed by the actions of NYSOFA and have suffered harm as a result of the manner in which the procurement was conducted.
6. "Mini-bid process" is an abbreviated bid process in which NYSOFA develops a project definition outlining its specific requirements and solicits bids from existing prequalified backdrop contractors. The mini-bid award is made based on best value or lowest price.
7. "Offerer” (also referred to as proposer, bidder or applicant) means the person or organization submitting a proposal in response to a solicitation for goods or services. For purposes of this procedure, the term “offerer” shall also refer to an applicant for grant awards under a request for applications process and to entities that offer the goods or services being sought.
8. “Procurement” means the purchasing of goods, known as commodities, and services. New York State agencies, such as NYSOFA, must procure commodities, services, and technology in accordance with Article 11 of the New York State Finance Law.
9. "Protest" means a formal written challenge made by an interested party to 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), or to the legal and/or factual basis of a contract award by NYSOFA.
10. “Protestor” means an interested party who has filed a protest with NYSOFA or OSC.
11. "Single source" means a procurement in which two or more offerers 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)).
12. "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)).
13. "Successful offerer" means the person(s) or organization(s) which receive written notification of contract award from NYSOFA advising that its bid, proposal, or application has been accepted. The term “successful offerer” shall also refer to the successful applicant for grant awards under a request for applications process.
14. "Unsuccessful offerer" means any person(s) or organization(s) that submits a bid, proposal or application which is not accepted by NYSOFA. Unsuccessful offerers will receive written notification from NYSOFA advising that its bid, proposal, or application was unsuccessful. The term “unsuccessful offerer” 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 procedures 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**

1. All solicitations issued by NYSOFA with respect to a contract award subject to these requirements, 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 file a protest concerning the procurement. Such notice shall indicate that a protest of a procurement shall be filed with the Director of the New York State Office for the Aging, at 2 Empire State Plaza, 5th Floor, Albany, NY 12223-1251. The solicitation should advise offerers that a copy of this procedure will be provided upon request.
2. All offerers shall be given written notice of contract/grant award or non-award.
3. 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.
4. The Director reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in his or her sole judgment, circumstances so warrant to serve the best interests of the State and NYSOFA.
5. Receipt of a bid protest shall not generate a stay action on the procurement unless otherwise determined by NYSOFA, in its sole discretion. If a bid protest or appeal is received by NYSOFA on a contract selection or award prior to the underlying contract being forwarded to OSC, notice of receipt of the protest and appeal will be included in the procurement record forwarded to OSC. If a final protest determination or final decision on appeal has been reached prior to transmittal to OSC, a copy of the final decision will be included in the procurement record and forwarded with the recommendation for award.

If a bid protest determination is made after the transmittal of a contract or grant award and procurement record to OSC, but prior to OSC approval pursuant to SFL § 112, a copy of the final NYSOFA bid protest determination shall be forwarded to OSC when issued, along with a letter either: a) confirming the original NYSOFA recommendation for award and supporting the request for final contract approval, b) modifying the proposed award recommendation in part and supporting a request for final contract approval as modified, or c) withdrawing the original award recommendation.

1. 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(s). 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.
2. If 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. NYSOFA will consider all information relevant to the protest, 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 formal protest decision.
3. All records related to bid 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.

**Section 5 Protest Procedure**

1. Any interested party may file a protest with the Director within fifteen business days from the date of the notice of the contract award or non-award, or from the date that the interested party knows or should have known of the facts which form the basis of the protest, except:
   1. any protest concerning factual errors, omissions or prejudice including patently obvious errors in the bid specifications or documents (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 at least ten (10) calendar days before the date set in the solicitation for the receipt of bids or proposals or applications; or
   2. any protests concerning a pending contract award within ten (10) calendar days after the interested party knows or should have known of the facts which form the basis of the protest.
2. Protests shall be resolved through written correspondence. However, either the protesting party or NYSOFA may request a meeting to discuss a protest. Either the protesting party or NYSOFA may decline such a meeting, without prejudice.
3. 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.
4. The Director may designate an NYSOFA employee, to review the procurement record, the materials presented by the Protestor and/or any materials required of or submitted by other Offerors, consult with agency counsel, and draft a proposed determination of the bid protest, addressing all of the issues that were raised by the protest.
5. The Director may require the protesting party, the NYSOFA staff involved in the procurement, the successful bidder, or any other interested party to submit such additional information he or she deems necessary and appropriate to make a determination with regard to the protest.
6. Nothing herein shall preclude the Director, or his or her designee, from obtaining and considering any information relevant to the procurement from any other source, to make a determination with regard to the protest.
7. The Director, may accept, modify or reject such proposed determination.
8. The Director shall issue a determination to the Protester or its agent within forty-five (45) calendar days of the filing of the protest. The answer to the bid protest should address all the factual and legal allegations contained in the protest, stating the reason(s) upon which it is based and informing the Protester of the right to appeal an unfavorable decision to the OSC. The Director may, in his or her sole discretion, and upon notice to the Protester, extend such period.
9. All parties that have participated in the protest shall be provided with a copy of the final bid protest determination of the Director. The final bid protest determination will be recorded and included in the procurement record, or otherwise forwarded to OSC upon issue.

**Section 6 Appeal**

1. An interested party may file a written appeal of NYSOFA’s protest determination with the Office of the State Comptroller’s Bureau of Contracts, within 10 business days of receiving the NYSOFA’s protest determination. A copy of the appeal must be delivered to NYSOFA and the successful bidder (unless the successful bidder is the appealing party in which case a copy of the appeal must be delivered to the original protesting party), and any other party that participated in the protest conducted by the contracting agency. This appeal process is applicable to all contract awards subject to the approval of the State Comptroller as required, or provided for, by law, resolution or otherwise.
2. Additionally, an interested party may file an initial protest with OSC’s Bureau of Contracts after NYSOFA has made a contract award if:

(1) NYSOFA has not provided notice of its protest procedure in the solicitation document; or

(2) the facts that give rise to the 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 NYSOFA.

The procedure for such an appeal or initial protest are described in 2 NYCRR § 24.5.