**CONTRACT AWARD PROTEST PROCEDURE FOR**
**CONTRACTS AWARDED 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 subject to the approval of the OSC Bureau of Contracts, including sole/single source procurements, emergency procurements, procurements awarded after a mini-bid process, and contract amendments.

## 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) "Comptroller" means the Comptroller of the State of New York, as well as his or her designee.

(c) "Contract award" is a written determination from OSC to an offerer indicating that OSC has selected a particular offeror for contract award under the procurement process. See State Finance Law §163(10)(a).

(d) "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).

(e) "Interested party" means a participant in the procurement process, and those whose participation in the procurement process was foreclosed by the actions of OSC and

who have suffered harm as a result of the manner in which the procurement was conducted.

(f) “Mini-bid process” is an abbreviated bid and selection process for project services, utilizing a list of prequalified vendors on a back drop contract.

(g) “Offeror” means the entity submitting an offer to OSC for a commodity or services, including those entities who respond to a solicitation or who participate in a sole source, single source, or emergency procurement.

(h) “Protest” means a written challenge by an interested party to a contract award by OSC.

(i) “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).

(j) “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).

(k) Solicitation means a document issued by OSC, requesting a response to a procurement need, including an Invitation for Bids, a Request for Proposals, or another written method of seeking a bid or a proposal for a specified purpose.

(l) “Successful offeror” or “successful bidder” means the offerer who receives written notification from OSC indicating that its bid or offer has been selected for contract award or, in the case of a contract entered into a noncompetitive basis, the individual or entity that has executed a contract with OSC, that is subject to the Comptroller's approval under State Finance Law §112.

## Section 3 General Requirements

(a) All offerors shall be given written notice of the contract award. Any unsuccessful offeror, upon request, must be afforded an opportunity for a debriefing, which, when requested within 15 calendar days of notice of the contract award, shall be scheduled within 10 calendar days of receipt of written request by the Bureau of Financial Administration, or as soon after that time as practicable under the circumstances. An offeror’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.

(b) Any solicitation issued by OSC with respect to a contract award subject to these guidelines 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 OSC's Director of Financial Administration at the Office of the State Comptroller, 110 State Street, Stop13-2, Albany, NY 12236. The solicitation must include a copy of these guidelines, or advise offerors that a copy of these guidelines will be provided to the offeror upon request.

(c) An interested party may file a protest with OSC's Director of Financial Administration within 10 business days from the date of notice of the contract award or, if a debriefing has been requested by the interested party, within five business days of the debriefing, whichever is later. 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 offerors in a timely manner.

(d) 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.

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

(f) OSC's Director of Financial Administration may, in his or her sole discretion and for good cause shown, 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.

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

(h) Nothing herein shall preclude OSC's 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 OSC's Director of Financial Administration within 10 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 OSC's Director of Financial Administration pursuant to section 3(e) of these guidelines.

**Note**: An interested party may file an initial protest with the Bureau of Contracts after OSC has made a contract award, if such contract is subject to approval by the Bureau of Contracts, and:

(i) OSC has not provided notice of its protest procedure in the solicitation; or

(ii) The facts that would give rise to a protest are not known to, and could not reasonably have been known to, an interested party prior to the date by which a protest was required to be filed with OSC.

(b) OSC's 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) OSC's Director of Financial Administration will provide a copy of any protest filed to the successful offeror.

(d) OSC's 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 OSC's Director of Financial Administration.

(e) Except where OSC's 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 protesting party and the successful offeror. The successful offeror may, but shall not be required to, file an answer to the protest. Any answer by the successful offeror must be filed with OSC's Director of Financial Administration no later than the date that the procuring Division of OSC is required to file its answer. If the successful offeror chooses to file an answer, it must simultaneously deliver a copy of such answer to the procuring Division of OSC and the protesting party, 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 offeror. Such reply shall be filed with OSC's 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 offeror, and the protesting party's reply must contain an affirmation as to such delivery.

(g) Upon the Director of Financial Administration's own initiative, or upon request of any participant in the protest process, OSC's 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 OSC's Director of Financial Administration will advise all participants in writing 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 offeror. 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 OSC's 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 OSC's Director of Financial Administration to consider the protest shall prepare a written recommendation to OSC's Director of Financial Administration, or his or her designee, addressing all of the issues that have been raised by the protest.

(k) OSC's 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, OSC's Director of Financial Administration, or his or he designee, may, in his or her sole discretion, consider any additional information from any source relating to the allegations set forth in the protest. Any reliance on outside information will be identified by the Director of Financial Administration in the determination.

(m) All parties that have participated in the protest, as well as the original successful offeror, shall be provided with a copy of the final determination of OSC's Director of Financial Administration, or his or her designee. The determination shall make findings of fact and conclusions of law and be made part of the procurement record.

## Section 5 Appeal

Upon receipt of OSC's Director of Financial Administration's determination of a protest, an interested party has 10 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 Bureau of Contracts' Guidelines entitled "APPEAL OF A PUBLIC CONTRACTING ENTITY PROTEST DETERMINATION." In such a case, the Director of Financial Administration shall have the rights and obligations provided by 2 NYCRR 24 *et seq*., including Appeal of a Public Contracting Entity's Protest Determination.

## 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.