



Category:
Financial

Responsible Office:
[University Counsel](#)

Procedure Title:
Contract Award Protest Procedure

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7561

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This procedure item applies to:
State-Operated Campuses

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Summary

This procedure shall be used to administratively resolve protests relating to State University of New York (University) contract awards. It shall apply to all contracts, including, but not limited to, competitive procurement (RFPs, IFBs), sole source procurements, single source procurements, emergency procurements, procurements awarded after a mini-bid process, and contract amendments.

Process

A. Definitions

As used herein, the following terms shall have the respective meanings hereinafter set forth:

1. Appeals Officer - the University campus ("campus") Vice President or designee or other official other than the Protest Officer, who is designated in the bid or solicitation document to receive, review and determine bid protest appeals.
2. Contract Award - a written determination by University to an offerer stating that University has accepted its bid or offer.
3. Emergency procurement - an urgent and unexpected situation where health and public safety or the conservation of public resources is at risk. (See State Finance Law, section 163(1) (b)).
4. Mini-bid process - an abbreviated bid and selection process for University procurement utilizing a list of prequalified vendors on a university-wide, multi-campus or New York State Office of General Services backdrop contract.
5. OSC - the New York State Office of the State Comptroller.
6. Protest - a written challenge by an interested party to a University Contract Award, whether or not such award is subject to the approval of the OSC under section 112 of the New York State

Finance Law.

7. Protest Officer - the Director of Procurement of a campus or an individual who is designated in the bid or solicitation document to receive, review and determine a Protest.
8. Protesting Party - an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
9. Single Source - a procurement in which, although two or more offers can supply the required commodities or services, University 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)).
10. Sole Source - a procurement in which only one offerer is capable supplying the required commodities or services (See State Finance Law section 163(1) (g)).
11. University - the State University of New York.
12. University Campus - a University State operated institution, including System Administration in Albany, New York.
13. Successful Bidder - the bidder or offerer whose bid or offer University proposes to accept.

B. Submission of Protest

1. A protesting party may submit a protest to a protest officer in writing, setting forth the basis on which the protesting party challenges a contract award by a University campus.
2. The protest must include the following:
 - a) Name, address, e-mail address, fax and telephone numbers of the protesting party or its designated agent.
 - b) Bid, solicitation or contract number.
 - c) Detailed statement of the legal and factual grounds for the protest, including a description of resulting prejudice to the protesting party.
 - d) Copies of all relevant documents.
 - e) Request for a determination by the protest officer.
 - f) Statement of the relief requested.
 - g) Information establishing that the protest was timely filed in accordance with this protest Procedure.
4. Bid protests concerning a pending or awarded contract must be filed by the protesting party within ten (10) business days after the protesting party knows or should have known of the facts which form the basis of the protest, by certified mail, or overnight mail or hand delivered to the protest officer at the address provided in the bid or solicitation. A protest may not be filed later than ten (10) business days after Issuance of an Award. An untimely protest will not be considered and will be returned to the protesting party.
5. The successful bidder may, but is not required to file an answer to the protest with the University. Any answer by the successful bidder must be filed with the protest officer no later than ten (10) business days after the successful bidder's receipt of the protest.

C. Review of Protest and Determination:

1. Upon receipt of the protest, the protest officer shall review the protest, supporting documents, and any other documents, including an answer by the successful bidder, if any, and issue a written determination within forty five (45) business days after receipt of the protest, where feasible. The protest officer may take any action or make any requests he or she deems necessary in order to investigate the protest, including extending the time to issue a decision in order to obtain all evidence and other pertinent information.

2. Notice of Determination: A copy of the written determination, stating the reason(s) upon which it is based and informing the protesting party or the successful bidder as applicable, of the right to appeal the unfavorable determination to the appeals officer shall be sent to the protesting party or its agent by regular mail. A copy of the written determination shall be sent to the successful bidder.

D. Appeals:

1. The written determination rendered by the protest officer to resolve the protest shall be the conclusive and final determination of the protest, unless, within ten (10) business days after receipt of the written determination, the protesting party or the successful bidder where applicable, appeals the determination to the appeals officer. The appeal should be in writing and sent by certified mail to the appeals officer at the address provided for in the bid or solicitation document or as stated in the Notice of Determination.

2. Protest Determination of appeals: The appeals officer will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the disputed procurement action prior to issuance of a formal dispute decision.

3. No evidence or information may be introduced or relied upon in the appeal that has not been presented to the protest officer. The appeals officer shall review the appeal and supportive documents and issue a written decision within ten (10) business days of receipt of the appeal, if feasible. The appeals officer may take any action or make any requests he or she deems necessary including extending the time to issue a decision in order to render a written decision on the a Notice of Decision of the appeals officer: A copy of the written decision, stating the reason(s) upon which it is based and where applicable, informing the protesting party or successful bidder of the right to appeal an unfavorable decision to the OSC shall be sent to the protesting party or its designated agent by regular mail. Unless otherwise provided in section E, below, the decision of the appeals officer shall be the University's conclusive and final determination of the protest.

5. The successful bidder may not be required to submit an answer or further documentation in opposition to the appeal.

E. Appeals to OSC:

If the Contract Award is subject to approval of the OSC pursuant to State Finance Law section 112 and Education Law section 355, or is otherwise submitted to the OSC for approval, the protesting party or successful bidder may submit an appeal of the determination to the OSC in accordance with the guidelines on Contract Award Protest Procedure as fully set out at <http://www.osc.state.ny.us/vendrep/protestprocedures.htm>.

Forms

There are no forms relevant to this procedure.

Related Procedures

[Purchasing and Contracting \(Procurement\)](#)

[Construction Contracting](#)

[Construction-Related Consultant Contracting Procedures](#)

[Participation by Minority Group Members and Women \(MWBES\) with Respect to State University of New York Contracts](#)

Other Related Information

OSC Bulletin G-232: [Contract Award Protest Procedures](#)

Authority

[NYS Education Law §355](#) (Powers of Trustees)

History

There is no history relevant to this procedure.

Appendices

There are no appendices relevant to this procedure.
