

 <p>Category: Financial Legal and Compliance</p> <p>Responsible Office: <a href="#">System-wide Procurement</a></p>	<p>Procedure Title: Contract Award Protest Procedure</p> <p>Document Number: 7561</p> <p>Effective Date: March 05, 2021</p> <p>This procedure item applies to: State-Operated Campuses</p>
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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 competitively procured contracts -Requests for Proposals (RFP) and Invitations for Bids (IFB).

## Process

### A. 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 be submitted by certified mail, overnight mail, or hand delivered to the protest officer at the address provided in the bid or solicitation and include the following:
  - a. Name, address, e-mail address and telephone number of the protesting party or its designated agent.
  - b. Bid, proposal 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.
3. Bid protests concerning a pending or awarded contract must be postmarked by the protesting party within ten (10) business days from the date of the notice of the contract award or if a debriefing has been requested by the protesting party, within five business days of the debriefing (whichever is later). The University will send a copy of the protest to the successful bidder.
  4. The successful bidder may, but is not required to, file an answer to the protest with the protest officer. Any answer by the successful bidder must be postmarked no later than ten (10) business days after the successful bidder's receipt of the protest.
  5. A protest may not be filed later than ten (10) business days after notice of a contract award or, if a debriefing has been requested by the protesting party, a protest must be filed within five business days of the debriefing (whichever is later). An untimely protest will not be considered and will be returned to the protesting party. A copy of the untimely protest and SUNY's response shall be included in the procurement record sent to New York State Office of the State Comptroller (OSC).

#### **B. 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. 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. A written notice of determination stating the reason(s) upon which it is based, shall be sent to the protesting party, or its agent, and the successful bidder by regular mail. The written determination shall also advise of the right to appeal an unfavorable determination to the appeals officer.
3. A copy of the protest, the written determination and all documents related thereto shall be included in the procurement record maintained by the University campus and the procurement record sent to OSC (if such contract is subject to the Comptroller's approval).

#### **C. 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, an appeal is postmarked by the protesting party or successful bidder. The appeal shall be in writing and sent by certified mail, overnight mail, or hand delivered to the appeals officer at the address provided for in the bid or proposal, or as stated in the written determination. The successful bidder may, but is not required to, submit an answer or further documentation in opposition to an appeal filed by the protesting party.
2. 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. The appeals officer will issue a written decision within ten (10) business days of receipt of the appeal. The appeals officer may take any action or make any requests he or she deems necessary including extending the time to issue a written determination. A copy of the written determination, stating the reason(s) upon which it is based shall be sent to the protesting party, or its designated agent and the successful bidder by certified mail. The written determination shall also advise of the right to appeal an unfavorable determination to OSC. Unless otherwise provided in section D, below, the determination of the appeals officer shall be the University's conclusive and final determination of the protest.
4. A copy of the appeal, the written decision of the appeals officer and all documents related thereto shall be included in the procurement record maintained by the University campus and the procurement record sent to OSC (if such contract is subject to the Comptroller's approval).

#### **D. 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, after following the protest and appeals procedures described above, may submit an appeal of the determination to the OSC in accordance with Part 24 of Title 2 of the New York Codes, Rules and Regulations.

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#### **Forms**

There are no forms relevant to this procedure.

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#### **Definitions**

**Appeals officer** - the University campus Vice President or designee or other official other than the Protest Officer, who is designated in the bid or proposal document to receive, review and determine contract award protest appeals.

**Contract award** - a written determination by University to the successful and unsuccessful offerers stating that University has accepted a bid or proposal.

**Invitation for Bid** – A competitive solicitation seeking bids for a specified commodity, pursuant to which award is made to the responsive and responsible bidder(s) submitting the lowest price.

**Protest** - a written challenge by protesting party to a competitively procured contract award, whether or not such award is subject to the approval of the OSC under section 112 of the State Finance Law.

**Protest officer** - the Director of Procurement of a University campus or an individual who is designated in the bid or proposal document to receive, review and determine a contract award protest.

**Protesting party** - an actual or prospective bidder or proposer or their representative whose direct

economic interest would be affected by the contract award or by the failure to award a contract.

**Request for Proposals** – A competitive solicitation seeking proposals for a specified service or technology, pursuant to which an award is made to the responsive and responsible proposer(s) offering the best value.

**University campus** - a University State operated institution, including System Administration in Albany, New York.

**Successful bidder** - the bidder or proposer whose bid or proposal University intends to accept.

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Related Procedures

[Construction Contracting](#)

[Construction-Related Consultant Contracting Procedures](#)

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

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Other Related Information

[OSC Guide to Financial Operations: XI.17 Protest Procedures](#)

[Part 24 of Title 2 of the New York Codes, Rules and Regulations](#)

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Authority

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

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History

There is no history relevant to this procedure.

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Appendices

There are no appendices relevant to this procedure.