State Capitol P.O. Box 2062
Albany, NY 12220-0062
www.its.ny.gov

New York State Information Technology Policy	**No:** NYS-P01-001
IT Policy Name: Bid Protest Policy	**Updated:** 09/18/2015 **Issued By:** NYS ITS **Policy Owner:** Counsel's Office

1.0 Purpose and Benefits of the Policy

This policy is a framework for the administration of formal and informal contract award protests that may be presented to the New York State Office of Information Technology Services (ITS). In the event that any vendor has a complaint or objection to the procurement requirements, the procurement process or any matter affecting the submission of a vendor's bid or proposal, the vendor is encouraged to informally contact the ITS procurement contact as listed in the solicitation document.

If the vendor believes that the objection affects the outcome or nature of the proposed award for any procurement, the vendor must follow the procedures for timely filing a formal protest set forth in this policy. Prior to contract award, protests which may affect the outcome or nature of the award may only be considered by ITS in the context of a formal written protest filed in accordance with the procedure within this document.

2.0 Enterprise IT Policy Statement

ITS strives to assure a fair, open and competitive process to all responsible and responsive vendors qualified to respond to any procurement. In furtherance of this goal, this policy is established to provide all parties involved in any contract award protest the ability to receive due consideration in accordance with this policy.

3.0 Scope of the Policy

This policy shall apply to all procurements let by ITS. In the event that a procurement to which this policy does not apply is the subject of a protest, ITS shall dispose of such protest in accordance with the procedure outlined in this policy.

4.0 Policy Statement

General Protest Guidelines

4.1 Any protest received by ITS must be in writing and must contain specific factual and legal allegations setting forth the basis on which the protesting party challenges the contract award by ITS. A formal protest must include:

(i) a statement of all legal and/or factual grounds for disagreement with an ITS specification or purchasing determination;

(ii) a description of all remedies or relief requested; and

(iii) copies of all applicable supporting documentation

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

4.2 ITS may, at its sole discretion, 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. Where ITS deems appropriate, ITS may require the protesting party, ITS staff involved in the procurement, the successful Offerer, or any other interested party, to address and/or submit further information with respect to additional issues raised by any ITS review of the procurement. Nothing herein shall preclude ITS from obtaining information relevant to the procurement from any other source, as it may deem appropriate.

Protest Procedure

4.3 Any interested party may file, by mail or electronic mail, a protest with the ITS Director of Financial Administration within ten business days from the date of the notice by ITS of the contract award, except that:

(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 or proposals including but not limited to matters concerning errors, omissions or prejudice in the bid specifications or documents must be filed on or before the date set in the solicitation for the receipt of bids or proposals; and

(ii) where ITS determines that sufficient circumstances exist, ITS may set forth a different time period for filing protests.

4.4 The answer to any protest should address all the factual and legal allegations contained in the protest, and shall be delivered by ITS within seven business days of receipt. ITS may dismiss any protest for failure to state clearly a legal or factual basis for protest.

A copy of the answer by ITS shall be delivered to the protester. The protestor may file a response with ITS within five business days of receipt of the ITS answer.

4.5 Upon receipt of a reply, if any, ITS Director of Financial Administration shall issue a final determination within ten business days.

Appeal Process

4.6 The protest determination of ITS shall be deemed a final and conclusive agency determination unless a written notice of appeal is received no more than five business days after the date the final protest decision is sent to the Offerer. Such notice of appeal must be filed in writing at the address set forth below:

Deputy Chief Information Officer
New York State Office of Information Technology Services
Reference: Bid Protest of ITS Solicitation (provide procurement reference number)
State Capitol, PO Box 2062
Albany, NY 12220-0062

4.7 Deputy Chief Information Officer shall hear and make a final written determination on all appeals within ten business days of the date the Appeal is received.

A formal protest appeal may not introduce new facts unless responding to issues newly raised as a result of the final protest determination.

5.0 Policy Compliance

This policy shall take effect upon publication. ITS shall review the policy at least once every two years. ITS may also assess compliance with this policy. To accomplish this assessment, ITS may issue requests for information, which will be used to develop any reporting requirements as may be requested by the NYS Chief Information Officer, the Executive Chamber or Legislative entities.

6.0 Definitions of Key Terms

(a) "Offerer" mean an individual or entity who has submitted an offer in response to a solicitation for commodities or services issued by ITS.

(b) "Responsive Offerer" means a bidder or Offerer meeting all of the minimum specifications and requirements as prescribed in a solicitation for commodities or services by ITS.

(c) "Successful Offerer" means the responsive bidder or Offerer which receives written notification from ITS indicating that its bid or offer has been accepted.

(d) "Interested party" means a participant in the procurement process and those who would be bona fide participants but whose participation in the procurement process has been foreclosed by the actions of ITS.

(e) "Contract award" is a written determination from ITS to an Offerer indicating that ITS has accepted its bid or offer (see State Finance Law §163(10)(a)).

(f) "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)).

(g) "Mini-bid process" is an abbreviated bid and selection process for individual agency projects utilizing a list of prequalified vendors on a back drop contract

(h) "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.

(i) "Single source" means a procurement in which although two or more Offerers can supply the required technology deliverables or time and materials, ITS, 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) "Protest" means a written challenge to a contract award by ITS.

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

Except for terms defined in this policy, all terms shall have the meanings found in http://www.its.ny.gov/glossary.

7.0 ITS Contact Information

Submit all inquiries and requests for future enhancements to the policy owner at:

Policy Owner: ITS Counsel's Office
New York State Office of Information Technology Services
State Capitol, PO Box 2062
Albany, NY 12220-0062
Telephone: (518) 473-5115

Questions may also be directed to a ITS Customer Relations Manager at:
Customer.Relations@its.ny.gov

The State of New York Enterprise IT Policies may be found at the following website:
http://www.its.ny.gov/tables/technologypolicyindex.htm

8.0 Review Schedule and Revision History

Date	Description of Change	Reviewer
04/27/2001	Original Policy Release	Counsel's Office
9/14/2011	Revision	Counsel's Office/Procurement
09/18/2015	Revision	Counsel's Office
09/19/2017	Scheduled Review	Counsel's Office

9.0 Related Documents

- State Technology Law
- State Finance Law Section 163