1.0 Purpose and Benefits

The purpose of this policy is to establish a procedure to be adhered to by interested parties wishing to challenge the outcome or nature of a proposed contract award made by the New York State Office of Information Technology Services (ITS).

In the event that an interested party merely has a question or informal complaint or objection to the procurement requirements, procurement process, or any matter affecting the submission of a vendor’s bid or proposal, the interested party is encouraged to contact the ITS designated procurement contact as listed in the solicitation document.

ITS strives to ensure a fair, open, and competitive process to all vendors qualified to respond to any competitive procurement issued by ITS. In furtherance of this goal, this policy is established to provide all interested parties involved in any contract award protest the ability to receive due and fair consideration where it presents a factual and/or legal basis for challenging a contract award made by ITS.

2.0 Authority

Section 2 of Executive Order No. 117 provides the State Chief Information Officer, who also serves as director of ITS, the authority to oversee, direct and coordinate the establishment of information technology policies, protocols and standards for State government, including hardware, software, security and business re-engineering. Details regarding this authority can be found in NYS ITS Policy NYS-P08-002, Authority to Establish State Enterprise Information Technology (IT) Policy, Standards and Guidelines.
3.0 Scope

This policy shall apply to all procurements let by ITS. Any interested party, as defined herein, will be given the opportunity to participate in the ITS protest process. In the event that a procurement to which this policy does not apply is the subject of a protest submitted to ITS, ITS will not review such protest and will not notify the protester of its decision thereto.

4.0 Information Statement

4.1 General Protest Guidelines

1. Any protest received by ITS 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 ITS. A formal protest must include: (i) a description of all remedies or relief requested; and (ii) copies of all applicable supporting documentation.

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.

3. Where ITS deems it 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.

4. Nothing herein shall preclude ITS from obtaining information relevant to the procurement from any other source, as it may deem appropriate.

5. ITS may dismiss any protest that fails to clearly state a legal or factual basis for protest or may summarily deny a protest containing only issues of law that have already been decided by the governing courts.

4.2 Protest Procedure

6. Where an interested party wishes to file a protest with ITS challenging a contract award made by ITS, the interested party must file the protest, by mail or electronic mail, with the ITS Director of Financial Administration by e-mailing its.sm.bidprotest@its.ny.gov within ten business days from the date it received notice of the contract award by ITS, 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
forth 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.

7. The protesting party must simultaneously deliver a copy of the protest to the contracting agency and, if known at the time, the successful bidder. Where the successful bidder is not known to the protesting party at the time it files a protest, ITS may forward a copy of the protest to the successful bidder at ITS’s discretion.

8. The successful bidder may, but is not required to, file an answer to the protest addressing all factual and legal allegations contained in the protest and shall deliver such answer to the protester and ITS within seven business days of receipt of the protest.

9. The protesting party may, but is not required to, file a reply to the successful bidder’s answer to the protest. Such reply shall be filed with ITS no later than three business days after receiving the successful bidder’s answer to the protest.

10. Within ten business days of the time period allotted for all filings made in accordance with this policy, the ITS Director of Financial Administration, or designee, shall issue a final determination addressing all issues raised in the protest as well as any relevant issues raised by its review of the procurement. All participants in the protest and the successful bidder shall be provided a copy of the determination.

5.0 Compliance

This policy shall take effect upon publication. Compliance is expected with all enterprise policies and standards. ITS may amend its policies and standards at any time; compliance with amended policies and standards is expected.
6.0 Definitions of Key Terms

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

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>Offerer</td>
<td>An individual, bidder, or entity who has submitted an offer in response to a solicitation for commodities or services issued by ITS.</td>
</tr>
<tr>
<td>Interested party</td>
<td>A participant in the procurement process and those whose participation in the procurement process has been foreclosed by the actions of ITS.</td>
</tr>
<tr>
<td>Contract award</td>
<td>A written determination from ITS to an Offerer indicating that ITS has accepted its bid or offer.</td>
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<tr>
<td>Protest</td>
<td>A written challenge by an interested party to a contract award made by ITS.</td>
</tr>
<tr>
<td>Comptroller or OSC</td>
<td>The Comptroller of the State of New York, as well as his or her designee.</td>
</tr>
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7.0 Contact Information

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

Division of Legal Affairs  
Reference: NYS-P01-001  
NYS Office of Information Technology Services  
State Capitol, ESP, PO Box 2062  
Albany, NY 12220  
Telephone: (518) 473-5115  
Email: its.sm.dla@its.ny.gov

Statewide technology policies, standards, and guidelines may be found at the following website: http://www.its.ny.gov/tables/technologypolicyindex
8.0 Revision History

This policy shall be reviewed at least once every two years to ensure relevancy.

<table>
<thead>
<tr>
<th>Date</th>
<th>Description of Change</th>
<th>Reviewer</th>
</tr>
</thead>
<tbody>
<tr>
<td>04/27/2001</td>
<td>Original Policy Release</td>
<td>Counsel’s Office</td>
</tr>
<tr>
<td>09/14/2011</td>
<td>Revision</td>
<td>Counsel’s Office/Procurement</td>
</tr>
<tr>
<td>09/18/2015</td>
<td>Revision</td>
<td>Counsel’s Office</td>
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<tr>
<td>03/22/17</td>
<td>Revision</td>
<td>Division of Legal Affairs</td>
</tr>
</tbody>
</table>

9.0 Related Documents

State Technology Law

State Finance Law Section 163