

Procedure for Protests/Appeals of Bid Specifications

A. Formal Written Protests

Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. Any Offeror or prospective Offeror who believes that there are errors or omissions in the procurement process or who otherwise has been aggrieved in the drafting or issuance of this Solicitation, may present a formal complaint to OTDA and request administrative relief concerning such action ("formal protest"). A formal protest must be submitted in writing to OTDA, by ground mail, except where alternate arrangements have been made, to the:

Director, Bureau of Contract Management
40 North Pearl Street, 12th Floor, Section D,
Albany, NY 12243.

A formal protest must include a statement of all legal and/or factual grounds for disagreement with an OTDA specification or purchasing decision including a contract award; a description of all remedies or relief requested; and copies of any and all applicable supporting documentation.

B. Deadline for Submission of Formal Protests for Errors or Omissions in the Procurement Process

OTDA must receive formal protests concerning errors, omissions, or prejudice, including patently obvious errors in the Solicitation or Specifications, at least 10 calendar days before the Bid Submission Date.

C. Deadline for Submission of Formal Protests of Contract Award

OTDA must receive a formal protest concerning a contract award within 10 business days of the issuance of notice of contract award or receipt of a non-select letter by an Offeror to:

Director, Bureau of Contract Management
40 North Pearl Street, 12th Floor, Section D,
Albany, NY 12243

D. Review and Final Determination of Protests

Protests will be resolved through written correspondence. However, the protester may request a meeting to discuss a formal protest or OTDA may initiate a meeting on its own accord, at which

time the participants may present their concerns. Either the protester or OTDA may decline such a meeting. The Director of BCM may designate an OTDA employee ("designee") to determine and undertake the initial resolution or settlement of any protest. The Director of BCM or his/her designee will conduct a review of the records involved in the protest, including, but not limited to: (a) the evaluation team's reports and recommendations; (b) the materials presented by the protesting party and/or (c), any materials required of or submitted by other Offerors. If necessary, the Director of BCM or the designee shall consult with OTDA's Counsel's Office; and prepare a protest decision. A copy of the protest decision, stating the reason(s) upon which it is based and informing the protester of the right to appeal an unfavorable decision to the OSC shall be sent to the protester or its agent within 45 calendar days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest decision will be recorded and included in the procurement record, or otherwise forwarded to the OSC upon issuance.

E. Appeals

Upon receipt of OTDA's protest decision, a protester has 10 business days to file an appeal of the determination with the OSC, Bureau of Contracts. The appeal must be filed with:

Director of the Bureau of Contracts at bidprotests@osc.state.ny.us or Bureau of
Contracts
New York State Office of the State Comptroller 110 State Street, 11th Floor
Albany, NY 12236

The protester's appeal must contain an affirmation in writing that a copy of the appeal has been served on OTDA, the successful bidder (except where the contracting agency upholds the protest and the successful bidder is the appealing party), and any other party that participated in the protest. In its appeal, the interested party shall set forth the basis on which it challenges OTDA's determination. The OSC Bureau of Contracts will conduct a formal review and issue its determination of the appeal in accordance with its established policy and procedures.

F. Reservation of Rights and Responsibilities of OTDA

OTDA reserves the right to waive or extend the time requirements for protest submissions, decisions, and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and OTDA. If OTDA determines that there are compelling circumstances, including the need to proceed immediately with the Contract award in the best interest of the State, then these protest procedures may be suspended, and such decision shall

be documented in the procurement record. OTDA will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of Contract award prior to issuance of a formal protest decision.

G. Procurement Activity Prior to Final Protest Determination

Receipt of a formal bid protest shall not stay action on a procurement unless otherwise determined by OTDA. If a formal protest or appeal is received by OTDA on a recommended award prior to the underlying Contract being forwarded to the OSC, notice of receipt of the protest and appeal must be included in the procurement record forwarded to the OSC. If a final protest decision or final decision on appeal has been reached prior to transmittal to the OSC, a copy of the final decision must be included in the procurement record and forwarded with the recommendation for award. If a final protest decision is made after the transmittal of a bid package to the OSC, but prior to the OSC approval under State Finance Law § 112, a copy of the final OTDA decision shall be forwarded to the OSC when issued, along with a letter either: a) confirming the original OTDA recommendation for award and supporting the request for final § 112 approval, b) modifying the proposed award recommendation in part and supporting a request for final § 112 approval as modified; or c) withdrawing the original award recommendation.

H. Record Retention of Bid Protests

All records related to formal Offeror protests and appeals shall be retained for at least one (1) year following resolution of the protest. All other records concerning the procurement shall be retained according to the statutory requirements for records retention.