July 2014

Office of General Services
New York State Procurement (NYSPro)

DISPUTE RESOLUTION PROCEDURES

I. Policy

It is the policy of New York State Procurement, a division of the Office of General Services, to provide Interested Parties, as that term is defined herein, with an opportunity to administratively resolve disputes related to NYSPRO bid solicitations, contract awards or contract administration. Interested parties are encouraged, but not required, to seek resolution of disputes through consultation with NYSPRO staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration.

II. Dispute Resolution Procedures

A. Informal Dispute Resolution Process

1. In the event there is a dispute under a Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under the Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under the Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under a Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

3. If negotiation between the Contractor and Authorized User fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

4. The Contractor shall extend the informal dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

B. Formal Dispute Process

1. Definitions

a. Filed means the complete receipt of any document by NYSPRO before its close of business.
b. Interested Party for the purpose of filing a dispute relating to a solicitation, as used in this section, means 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.
c. Interested Party for the purpose of filing a dispute relating to a contract award, as used in this section, means an actual bidder or offeror for the subject contract.
d. Interested Party for the purpose of filing a dispute relating to the administration of a contract, as used in this section, means the awarded contractor for the subject contract.
e. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by NYSPRO.
f. A Formal Dispute means a written objection by an Interested Party to any of the following:
   i. A solicitation or other request by NYSPRO for offers for a contract for the procurement of commodities, services or technology.
   ii. The cancellation of the solicitation or other request by NYSPRO.
   iii. An award or proposed award of the contract by NYSPRO.
   iv. A termination or cancellation of an award of the contract by NYSPRO.
   v. Changes in the scope of the contract by the Commissioner of OGS.
   vi. Determination of "materiality" in an instance of nonperformance or contractual breach.
   vii. An equitable adjustment in the contract terms and/or pricing made by the Commissioner during a force majeure event.

2. Submission of Formal Disputes

a. A Formal Dispute must be filed in writing with the Director of NYSPRO by mail, email or facsimile, using the following contact information:

Director, New York State Procurement
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437
Email: Donald.Greene@ogs.ny.gov

b. The Formal Dispute must include:
   i. Name, address, e-mail address, fax and telephone numbers of the filer.
   ii. Solicitation or contract number.
   iii. Detailed statement of the legal and factual grounds for the Formal Dispute, including a description of resulting prejudice to the filer.
   iv. Copies of relevant documents.
   v. Request for a ruling by the agency.
   vi. Statement as to the form of relief requested.
   vii. All information establishing that the filer is an Interested Party for the purpose of filing a Formal Dispute.
   viii. All information establishing the timeliness of the Formal Dispute.

3. Formal Disputes concerning a solicitation shall be filed by an Interested Party (see II.B.(1)(b)) with NYSPRO no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Disputes concerning the solicitation shall be filed with NYSPRO at least twenty-four (24) hours before the time designated for receipt of bids.

4. Formal Disputes concerning a pending or awarded contract must be filed within ten (10) business days by an Interested Party (see II.B.(1)(c)) after the disputing party knew or should have known of the facts which form the basis of the Formal Dispute; however, a Formal Dispute may not be filed later than ten (10) business days after issuance of the contract award.

5. Formal Disputes concerning the administration of the contract after award (see II.B(1)(iv-vii)), must be filed within twenty (20) business days by an Interested Party (see II.B(1)(d)) after the disputing party knew or should have known of the facts which form the basis of the Dispute. However, if Contractor and Authorized User participate in the Informal Dispute Resolution Process, Formal Disputes concerning the administration of the contract after award must be filed by Contractor within twenty (20) business days after the Contractor and Authorized User failed to reach resolution through the Informal Dispute Resolution Process set forth in Section II.A.

6. Agency Response

a. NYSPro will consider all information relevant to the Formal Dispute, and may, in its discretion, suspend, modify, or cancel the disputed procurement/contract action prior to issuance of a Formal Dispute decision.
b. NYSPro reserves the right to require the filer to meet or participate in a conference call with OGS to discuss the Formal Dispute when, in its sole judgment, circumstances so warrant.
c. NYSPro reserves the right to waive or extend the time requirements for decisions and final determinations on appeals herein prescribed when, in its sole judgment, circumstances so warrant.
d. NYSPro reserves the right to consider or reject the merits of any Formal Dispute.
e. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the Formal Dispute.

7. Appeals

a. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed with the Chief Procurement Officer, by mail or facsimile, using the following contact information:

Chief Procurement Officer
New York State Procurement
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYSPRO shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.
c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.
d. An appeal of the decision of the Director of NYSPRO shall not include new facts and information unless requested in writing by the Chief Procurement Officer.
e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

8. Legal Appeals

a. Nothing contained in these provisions is intended to limit or impair the rights of any vendor or contractor to seek and pursue remedies of law through the judicial process.