



## Office of Information Technology Services

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[www.its.ny.gov](http://www.its.ny.gov)

<b>New York State Information Technology Policy</b>	<b>No:</b> ITS-P23-003
<b>IT Policy:</b>  <b>Bid Protest</b>	<b>Updated:</b> 01/25/2023
	<b>Issued By:</b> NYS Office of Information Technology Services  <b>Owner:</b> Division of Legal Affairs

## 1.0 Purpose and Benefits

This policy establishes the procedure for interested parties to challenge the outcome or nature of a proposed contract or procurement award made by the New York State (NYS) Office of Information Technology Services (ITS).

Bidders are encouraged to take advantage of the debriefing process, which allows vendors to learn how their bid was evaluated and potential improvements for future bids. Bidders are also encouraged to use the Question-and-Answer periods during procurements to raise concerns prior to bid evaluation and award.

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 any interested party involved in any contract or procurement award protest the ability to receive due and fair consideration where it presents a factual and/or legal basis for challenging a contract or procurement award made by ITS.

## 2.0 Authority

*Section 1 of Executive Order No. 117<sup>1</sup>, established January 2002* charges the State Chief Information Officer with overseeing and supervising the management and operations of ITS. *Section 102(2) of the State Technology Law* gives the Director of ITS responsibility for the administration of ITS. Details regarding this authority can be

<sup>1</sup> All references to Executive Order 117 refer to that which was originally issued by Governor George E. Pataki on January 28, 2002 and continued by Executive Order 5 issued by Governor Eliot Spitzer on January 1, 2007, Executive Order 9 issued by Governor David A. Patterson on June 18, 2008, Executive Order 2 issued by Governor Andrew M. Cuomo on January 1, 2011 and Executive Order 6 issued by Governor Kathy Hochul on October 8, 2021.

found in [NYS-P08-002 Authority to Establish Enterprise Information Technology \(IT\) Policies, Standards, and Guidelines.](#)

## 3.0 Scope

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This policy document applies to ITS and its employees (including full-time, part-time, and temporary employees), contractors, consultants, volunteers, interns, and ITS supported agencies ("Client Agency").

## 4.0 Information Statement

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### 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 or procurement 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 this policy, or consider any materials submitted in writing, beyond the time periods set forth in this policy.
3. Where ITS deems it appropriate, ITS may request the protesting party to address and/or submit further information with respect to any additional issues raised.
4. Nothing herein shall preclude ITS from obtaining information relevant to the procurement from any source, as it may deem appropriate.

### 4.2 Protest Procedure

1. Protests must be sent to the ITS Director of the Vendor Sourcing and Management Organization (VSMO) either by mail to the New York Office of Information Technology Services, Swan Street Building, Core 4 Floor 1, Albany, NY 12223 or by electronic mail at [its.sm.bidprotest@its.ny.gov](mailto:its.sm.bidprotest@its.ny.gov). Electronic mail is preferred. Protests must be sent within ten (10) business days from the date the interested party receives notice of contract or procurement award by ITS, or within five (5) business days after a formal debriefing, 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.
2. The protesting party must simultaneously deliver a copy of the protest to, 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 the discretion of ITS.

3. 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 (7) business days of receipt of the protest.
4. 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 (3) business days after receiving the successful bidder's answer to the protest.
5. Within ten (10) business days of the time period allotted for all filings made in accordance with this policy or as specified in the procurement, the ITS Director of VSMO, 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.
6. The determination by the ITS Director of VSMO shall be deemed the final agency determination unless the interested party files an appeal. Within ten (10) business days of receipt of the determination from the ITS Director of VSMO, the interested party may file an appeal to the ITS Chief Financial Officer (CFO) in writing. Such appeal should be sent to [its.sm.bidprotest@its.ny.gov](mailto:its.sm.bidprotest@its.ny.gov) or Chief Financial Officer, New York State Office of Information Technology Services, Swan Street Building, Core 4 Floor 5, Albany, NY 12223. Electronic submissions are preferred. Within ten (10) business days of receipt of such appeal, the CFO shall issue a final determination.
7. Any appeal to the CFO shall not contain any new facts or information unless requested by the CFO. The decision of the CFO shall be deemed the final agency determination.
8. Nothing in this policy is intended to impair or limit the rights of interested parties to seek any remedies allowed by New York State law, rule, or regulation.

## 5.0 Compliance

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This policy shall take effect upon publication. Compliance is required with all enterprise policies and standards. ITS may amend its policies and standards at any time; compliance with amended policies and standards is required.

## 6.0 Definitions of Key Terms

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

## 7.0 Contact Information

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

**Division of Legal Affairs**  
**Reference: ITS-P23-003**  
**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](mailto:its.sm.dla@its.ny.gov)**

Statewide technology policies, standards, and guidelines may be found at the following website: <https://its.ny.gov/policies>

## 8.0 Revision History

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This policy should be reviewed consistent with the requirements set forth in [\*NYS-P09-003 Process for Establishing Information Technology Policies, Standards, and Guidelines\*](#)

Date	Description of Change	Reviewer
04/27/2001	Original Policy Release	Counsel's Office
09/14/2011	Revision	Counsel's Office/Procurement
09/18/2015	Revision	Counsel's Office
03/22/2017	Revision	Division of Legal Affairs
08/24/2020	Revision	Division of Legal Affairs
05/24/2021	Updated Scope Language	Division of Legal Affairs
01/25/2023	Updated – minor revisions	Division of Legal Affairs

## 9.0 Related Documents

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