NYSDOT ADMINISTRATIVE PROCEDURE FOR PROTEST OF DESIGNATION FOR PROFESSIONAL CONSULTANT SERVICES AND ARCHITECTURAL/ENGINEERING CLAIM OF MISREPRESENTATION AGAINST ANOTHER PARTY

Applicability:

The intent and purpose of these guidelines is to set forth the New York State Department of Transportation (NYSDOT) protest procedure to be utilized when an interested party challenges an Architectural/Engineering (A/E) or a Non Architectural/Engineering (Non A/E) consultant designation by NYSDOT, or has a claim of misrepresentation against another party. For the purpose of this procedure, an “interested party” means a participant in a specific procurement process or any party whose participation in a procurement process has been directly affected by the actions of NYSDOT.

The objective of NYSDOT’s A/E and Non A/E consultant procurement process is to facilitate delivery of the agency’s mission, to promote competition and fairness in the contracting process, and to ensure that the process is conducted in accordance with statutory requirements. To this end, interested parties shall be provided an opportunity to raise specific concerns with respect to the legal and/or factual basis of a NYSDOT consultant designation. A protest regarding a specific designation, including a claim of misrepresentation allegedly affecting the scoring process, must be in writing and filed with NYSDOT within ten (10) days of the public posting of that designation. A general claim of misrepresentation in A/E consultant information that is currently posted on NYSDOT’s CSS Web, but is unrelated to any specific procurement process, must also be in writing and may be filed at any time.

Decisions Rendered

NYSDOT will consider all information relevant to the protest or claim of misrepresentation and render a determination at any of the stages during the protest review process. The determination shall make findings of fact and determinations on all issues in dispute. NYSDOT shall issue a written decision addressing all issues raised by the protest or claim of misrepresentation, as well as any relevant issues which may arise through the review of the procurement process or information on CSS Web. NYSDOT shall provide information to the filer, or its agent, regarding the right to appeal a decision.

NYSDOT reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant. NYSDOT also reserves the right to submit a proposed contract award to the Office of the State Comptroller (OSC) for approval while a protest or claim of misrepresentation is pending.

Procedure for A/E and Non-A/E Designation Protests or an A/E Claim of Misrepresentation:

1. A competitive solicitation is made for Architectural/Engineering (A/E) or for Non Architectural/Engineering (Non A/E) professional services. The solicitation leads to the designation(s) of a selected consulting firm(s). The solicitation process includes, among other
steps, an opportunity for interested parties to request a debriefing post designation. This procedure shall be referenced in all A/E and Non-A/E solicitations. It is strongly recommended that interested parties who have an interest in the contract designation request a debriefing prior to filing a protest. Many questions and concerns have been allayed in this manner and may mitigate the need for a protest altogether.

2. Any interested party may file a written protest. In all protest cases, the protesting party must set forth its challenge in writing, including a description of the resulting prejudice to the filer. The protest must:
   a. Contain specific factual and/or legal allegations for the basis on which the protestor is challenging the designation by NYSDOT.
   b. For protests regarding designation, be filed within ten (10) business days of notice of the consultant designation with respect to said agreement.
   c. Contain the name, address, e-mail address, fax and telephone numbers of the protesting party or parties.
   d. For protests regarding designation, reference the Solicitation or Contract number.
   e. Provide copies of supporting and relevant documents.
   f. Request a determination by NYSDOT.
   g. Provide a statement as to the form of relief requested.
   h. Provide all information establishing that the filer is an interested party for the purpose of filing a protest or claim of misrepresentation.
   i. Provide all information establishing the timeliness of the protest.

Protests and claims of misrepresentation, shall be e-mailed to or mailed to:

   Director, Contract Management Bureau
   New York State Department of Transportation
   50 Wolf Rd. Suite 1CM
   Albany, New York 12232-0203
   ATTN:  Contract Number _______

The protest or claim of misrepresentation must set forth the basis for the interested party’s contention that the initial NYSDOT decision was incorrect, and may offer any new or additional evidence in support of the protest or claim. The protest or claim of misrepresentation must address each item for which the alleged wronged party did not receive satisfaction. Any protest of a designation must be based on facts which could have materially impacted the selection process, not mere dissatisfaction with the selection made.

An interested party may file only one (1) protest or claim of misrepresentation with respect to a particular solicitation.

3. The Director of the Contract Management Bureau will review the protest or claim of misrepresentation and make a written determination as to the merits of the complaint filed. The determination shall make findings of fact and will address each protest item raised. It will also include a copy of this procedure.
4. If the interested party contends that the decision of the Director of the Contract Management Bureau does not address the issues raised in the protest or claim of misrepresentation, or is contrary to the facts or the law, or was improperly made, the interested party may appeal the decision by mailing a Notice of Appeal, within five (5) business days of the receipt of the decision, to the following address:

   Secretary, Contract Review Unit  
   New York State Department of Transportation  
   Office of Legal Affairs  
   50 Wolf Rd. – 6th Floor  
   Albany, New York 12232-0203  

   ATTN: NOTICE OF APPEAL: Contract Number ________

5. The designated Secretary of the Contract Review Unit will refer the matter to the appropriate Deputy Engineer or Bureau or Office Director of the program area affected by a claim of misrepresentation or initiating the procurement who, with the advice of an attorney in the NYSDOT Office of Legal Affairs, will issue a decision, in writing, determining all issues raised on the Appeal. The decision of the Engineer or Director shall constitute the final determination of the NYSDOT. Nothing contained in these provisions is intended to limit or impair the rights of any consultant to seek and/or pursue remedies of law through the judicial process.