

**STATE OF NEW JERSEY
DEPARTMENT OF CHILDREN AND FAMILIES**

DEPARTMENT POLICY: DCF.P1.08-2008

EFFECTIVE DATE: August 1, 2008

SUBJECT: **Request for Proposals (RFP) Appeal Procedures**

I. PURPOSE

The purpose of this policy is to set forth the parameters for handling Protests or Appeals of contract award determinations resulting from a public Request for Proposals (RFP) issued by the Department of Children and Families (DCF).

II. SCOPE

This policy applies to all Requests for Proposals issued by the Department.

III. DEFINITIONS

In addition to the defined terms included in the Glossary of the Manual, the following terms, when capitalized, shall have the meaning as stated:

Protest/Appeal is the procedure defined herein for unsuccessful applicants to challenge the determination of the proposal review and evaluation process from which they were denied funding.

IV. POLICY

A. Pursuant to the provisions set forth in N.J.A.C. 17:12-3.3, an unsuccessful applicant, after submitting a proposal in response to an RFP issued by the Department, may submit a written Protest or Appeal to the Director of the DCF Office of Contract Administration, Accounting and Procurement (OCAP) concerning the following:

1. Rejection of its proposal when such rejection arises under the provisions of N.J.A.C. 17:12-2.2, Requirements for Bidding and DCF P1.04 Screening for Eligibility, Conformity and Completeness. Such Protests may only dispute whether the facts of a particular case are sufficient to meet the requirements for rejection; and/or
2. Notice of non-selection or determination not to award contract funding. Such Protests or requests for appeal will be heard only if it is alleged that the Department has violated a statutory or regulatory provision in awarding the grant.

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- B. An unsuccessful applicant, after submitting a proposal in response to a public RFP and finding cause to Protest decisions pursuant to Section IV.A.1 or 2 above, shall make a written request to the OCAP Director, setting forth, in detail, the specific grounds for challenging the Department's determination. The Protest shall be filed within 10 business days following the date of the written notification from DCF that the applicant's proposal has not been accepted, unless other timeframes are specified in the RFP.

A Protest regarding the Department's decision to reject a proposal or award a contract shall contain the following items:

1. Identification of the RFP (i.e. title and/or service description and issue date);
2. The specific grounds for challenging the rejection or intended contract award, including all arguments, materials and/or other documentation that may support the protester's position that the contract award should be rescinded; and
3. A statement as to whether the protesting applicant requests an opportunity for oral presentation and the reason(s) for the request.

- C. The OCAP Director may disregard a Protest when:

1. The written Protest or Appeal does not contain all of the items set forth above;
2. The applicant disagrees with the Evaluation Committee's exercise of its proper discretion or professional judgment in the evaluation and scoring of a proposal;
3. The applicant is seeking feedback regarding the perceived strengths and limitations of its proposal; and,
4. A protest of award is filed after the 10 day protest period.

- D. The Department shall, except as set forth below, hold all contract awards until a final decision is rendered by the OCAP Director on the merits of the Protest. The OCAP Director may award the contract, notwithstanding the receipt of a Protest, if the failure to award the contract will result in danger and/or risk to the safety and well-being of DCF clients, or substantial cost to the State. In such event, the OCAP Director shall notify all interested parties in writing.

- E. The OCAP Director shall acknowledge receipt of the Protest or request for Appeal in writing to the applicant within 3 days by e-mail or certified mail.

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- F. The Protest accepted by the OCAP Director shall be resolved by written decision on the basis of a review of the written record including, but not limited to:
1. The written Protest;
 2. The terms, conditions and requirements of the RFP;
 3. The proposals submitted in response to the RFP;
 4. The Proposal Evaluation Committee report and/or the Award Recommendation document; and
 5. Pertinent administrative rules, statutes, case law; and any associated documentation the Director deems appropriate.

In cases where no oral presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing.

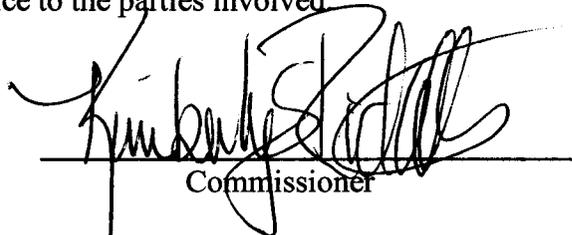
The OCAP Director is also entitled to request, receive and review copies of any and all records and documents that he/she deems appropriate and relevant to the issues and arguments set forth in the Protest. Upon receipt of the Director's request, the protesting applicant shall promptly provide the requested records and documents free of charge in the time, place and manner specified by the Director. Failure of the protesting applicant to comply with this section may, at the reasonable discretion of the Director, constitute sufficient basis to resolve the Protest against the applicant. The Director may also consider relevant information requested and received from other parties as deemed appropriate.

- G. The OCAP Director has sole discretion to determine if an oral presentation by the protesting applicant is necessary to reach an informed decision. Oral presentations are fact-finding for the benefit of the Director. The Director also has sole discretion regarding who may attend the oral presentation.
- H. The OCAP Director or designee may perform a review of the written record or conduct an oral presentation directly. The Director's designee shall not include members of the Proposal Evaluation Committee. In the case of a review or oral presentation being handled by a designee, the determination of the designee shall be in the form of a report and recommendations to the Director, which shall be advisory in nature and not binding on the Director.
- I. Subsequent to the review, the OCAP Director shall make a written decision on the matter of the Protest and confer with the DCF Chief of Staff for final

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approval. With the authorization of the Chief of Staff, the determination shall be signed and issued by the OCAP Director, and such determination shall be a final Departmental decision pursuant to N.J.A.C. 17:12-3. The determination letter shall include a summary of the Director's findings and a statement that final determinations on matters of Protest are appealable to the Appellate Division of the Superior Court of New Jersey. Copies of the final determination letter and all accompanying documentation shall be retained on file and forwarded to the following:

1. Commissioner's Office;
 2. DCF Chief of Staff;
 3. Director of the DCF Office of Legal Compliance & Strategic Planning;
 4. Director of the RFP Originating Division/Office; and the
 5. Coordinator of the Proposal Evaluation Committee.
- J. To the extent that the OCAP Director agrees with the protester, the Department shall take such action as it deems necessary to correct the situation.
- K. All Protests shall be completed within the timeframes specified below:
1. Protests filed pursuant to Section IV.A.1 of this policy regarding rejection in accordance with the provisions of N.J.A.C. 17:12-2.2, Requirements for Bidding and DCF P1.04 Screening for Eligibility, Conformity and Completeness shall be resolved prior to the Proposal Evaluation Committee's review and scoring of accepted applications.
 2. Protests filed pursuant to Section IV.A.2 of this policy regarding non-selection shall be completed within 30 days of the OCAP Director's receipt of the applicant's written Protest or Appeal.
- L. The OCAP Director may, in instances where public exigency exists or where there is potential for substantial cost benefit or other such advantage to the State, modify or amend the time periods noted in this policy. In these instances, the Director shall give adequate notice to the parties involved



Commissioner