

IN THE SUPREME COURT OF THE STATE OF ARIZONA  
ADMINISTRATIVE OFFICE OF THE COURTS

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In the Matter of: )  
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PROCUREMENT BID PROTEST, )  
CONTRACT CLAIM, DEBARMENT, ) Administrative Directive  
AND APPEALS PROCEDURE FOR ) No. 2013 - 14  
THE ADMINISTRATIVE OFFICE OF )  
THE COURTS )  

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The Administrative Office of the Courts last established policies and procedures for resolving procurement and contract disputes and for challenging debarments in 1994. Since that time, related provisions in the state procurement code have been amended, and the agency's experience with bid protests and contract claims has demonstrated a need to update these procedures. Therefore,

IT IS DIRECTED that the amended policies and procedures attached hereto are adopted and replace the current policy, Procurement Appeals Procedure Section 7.04, of the Administrative Office of the Courts Policy Manual.

IT IS FURTHER DIRECTED that the attached policies and procedures are effective on and after the date of signature.

Dated this 10th day of June, 2013.

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David K. Byers  
Administrative Director

## **AOC PROCUREMENT BID PROTEST, CONTRACT CLAIM, DEBARMENT, AND APPEALS PROCEDURE**

### **Purpose**

To provide a formal process for bid protests and appeals arising from Supreme Court, Administrative Office of the Courts use of the Procurement Rules for the Judicial Branch. This procedure shall be the exclusive procedure for asserting a claim against the State of Arizona or any entity of the state arising in relation to any such procurement and contracting.

### **Definitions**

“Affiliate” means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.

“Days” means calendar days unless otherwise stated.

“Debarment” means prohibition of a person from participation in judicial branch procurement for cause.

“Interested party” means an actual or prospective bidder or offeror or a contractor whose economic interest is affected substantially and directly by the issuance of a solicitation, by the award of a contract, by the failure to award a contract, or by action or inaction based upon a contract term. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.

“Offeror” means a person who responds to a solicitation.

### **Procedures**

#### **A. Informal Dispute Resolution**

Prior to commencing a formal contract claim pursuant to these rules, the interested party must first use any procedures made available by the contract.

B. Protests

1. Content. Any interested party may protest a solicitation issued by the AOC, a determination of not susceptible for award of a contract, or the award of a contract.

The protest shall be submitted in writing to the procurement officer and shall include the following information:

- a. The name, address and telephone number of the protester;
  - b. The signature of the protester or its representative;
  - c. Identification of the purchasing representative and the solicitation or contract number;
  - d. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
  - e. The form of relief requested.
2. Time limits.
    - a. When an alleged defect in procurement procedures or in solicitation documents is apparent before the solicitation response is due, a protest shall be filed with the procurement officer before the response due date or within ten (10) days after the protestor knows or should have known of the alleged defect, whichever is earlier.
    - b. All other protests shall be filed within ten (10) days after the procurement officer makes the procurement file available for public inspection following the contract award.
    - c. The interested party may submit a written request to the procurement officer for an extension of the time limit for filing a protest. The written request shall be submitted before the expiration of the time limit and shall set forth good cause as to the specific action or inaction of any court personnel that resulted in the interested party being unable to submit the protest within the 10 days. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted set forth a new date for submission of the filing.
  3. Notice. The procurement officer shall promptly give notice of the protest to the offeror to whom an award was made or, if no award has been made when the protest is filed, to all offerors.
  4. Stay of procurement during protest. If a protest is timely filed, the procurement officer shall make a written determination to either:
    - a. Proceed with the award or contract performance, or

- b. Stay all or part of the procurement or contract performance if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the court, as determined by the procurement officer.

The determination shall be issued no later than the date of the decision of the procurement officer regarding the protest. The procurement officer shall provide a copy of the written determination to the protester, to the successful offeror, if any, and, if the protest was filed before an award, to all offerors.

5. Decision by procurement officer. The procurement officer shall issue a written decision within thirty (30) days after a protest has been filed. The decision shall contain an explanation of the basis of the decision and shall be furnished to the protester and to all interested parties by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

The time limit for decisions may be extended by the Administrative Director for good cause for a reasonable time. The procurement officer shall notify the protester of any extension of time.

If the procurement officer does not issue a decision within the time limits established, the protester may proceed as if the procurement officer had issued an adverse decision.

6. Remedies available. If the procurement officer sustains the protest in whole or in part and determines that a solicitation, a determination of not susceptible for award, or a contract award does not comply with the Procurement Rules for the Judicial Branch, the procurement officer may implement an appropriate remedy including:

- a. Decline to exercise an option to renew under the contract;
- b. Terminate the contract;
- c. Amend the solicitation;
- d. Issue a new solicitation;
- e. Award a contract consistent with the Procurement Rules for the Judicial Branch, or
- f. Such other relief as is determined necessary to ensure compliance with the Procurement Rules for the Judicial Branch.

8. Determination of remedy. In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:

- a. The seriousness or materiality of the procurement deficiency;

- b. The degree of prejudice to other interested parties or to the integrity of the procurement system;
- c. The good faith of the parties;
- d. The extent of performance;
- e. The costs to the court;
- f. The urgency of the procurement;
- g. The impact on the court's mission; and
- h. Other relevant issues.

### C. Contract Claims

1. Initiation and time limits. A contractor may file a contract claim with the legal services officer within forty-five (45) days after the claim arises. The Administrative Director may authorize consideration of a contract claim that is untimely when the Administrative Director finds good cause and such consideration is determined by the Administrative Director to be in the best interest of the Court.
2. Claim content. The claim shall state:
  - a. Issues in controversy;
  - b. Pertinent contract provisions;
  - c. Relevant factual areas of agreement or disagreement;
  - d. Legal arguments with supporting rationale.
3. Decision by legal services officer. If a controversy cannot be resolved by mutual agreement, the legal services officer shall, upon a written request by the contractor for a final decision, issue a written decision no more than thirty (30) days after the request is filed. Before issuing a final decision, the legal services officer shall review the facts pertinent to the controversy and secure any necessary assistance from legal, fiscal, and other advisors. The legal services officer shall make findings of fact and conclusions of law concerning the claim and furnish a copy of a contract claim decision to the contractor, by certified mail, return receipt requested, or by another method that provides evidence of receipt.

The decision shall include a paragraph that substantially states the following:

This is the final decision of the legal services officer. This decision may be appealed to the Administrative Director or designee. If you appeal, you must file a written notice of appeal containing the information below with the Administrative Director or designee within fourteen days from the date you receive this decision.

- A copy of the decision of the legal services officer;
- A statement of the factual areas of agreement or disagreement; and
- The precise factual or legal error in the decision of the legal services officer from which an appeal is taken.

If the legal services officer does not issue a decision within thirty (30) days after the request is filed, the contractor may proceed as if the legal services officer had issued an adverse decision.

#### D. Appeal

##### 1. Filing.

- a. An interested party may appeal from an adverse decision of the procurement officer on a protest or the legal services officer on a contract claim to the Administrative Director within fourteen (14) days from the date the decision is received or deemed received.
- b. The Administrative Director may consider an appeal that is untimely when the Administrative Director finds good cause and consideration of the appeal is determined by the Administrative Director to be in the best interest of the Court.
- c. The appellant shall also file a copy of the appeal with the officer who rendered the decision appealed.
- d. The appeal shall contain a copy of the decision appealed and the precise factual or legal error in the decision from which an appeal is taken.
- e. The procurement officer shall immediately give notice of the appeal of a protest to all offerors.
- f. The procurement officer or legal services officer shall file with the Administrative Director a report and recommendation regarding the appeal within fourteen (14) days after the appeal is filed. The report shall contain copies of any documents relevant to the protest or contract claim and a statement setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal. A copy of the report shall be furnished by the procurement officer or legal services officer to the appellant by certified mail, return receipt requested, or by another method that provides evidence of receipt. The

Administrative Director may invite a successful offeror, if any, to comment on the procurement officer's report.

2. Stay of procurement during appeal of solicitation or contract award protest. If a stay is issued under subsection (B)(4), the filing of an appeal shall automatically continue the stay, unless the Administrative Director makes a written determination that the award of the contract or a notice to proceed with the contract performance is necessary to protect the substantial interests of the AOC. The Administrative Director may stay the procurement if the Director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the Court.
3. Resolution by Administrative Director.
  - a. The Administrative Director may dismiss, upon written determination, an appeal without a hearing if the appeal is untimely or does not state a valid basis for protest or a valid contract claim. The Administrative Director may direct the parties to engage in settlement negotiations or alternative dispute resolution procedures before referring the matter for a hearing.
  - b. The Administrative Director may determine the appeal based on the documents submitted if the Administrative Director finds no genuine dispute as to any material fact. Otherwise, the Administrative Director shall designate the matter for a hearing.

#### E. Debarment

1. Investigation. Upon receipt of information concerning a possible cause for debarment, the legal services officer shall investigate the possible cause. If the legal services officer has a reasonable basis to believe that a cause for debarment exists, the legal services officer may propose debarment for a period not to exceed three (3) years.
2. Notice of proposed debarment. Within seven (7) days of a decision to propose debarment, the legal services officer shall notify the subject(s) by personal service or certified mail, return receipt requested, or by any other method that provides evidence of receipt.

The notice of proposed debarment shall state:

- a. The basis for proposed debarment;
- b. The proposed debarment period;
- c. That following debarment, bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and
- d. That the person is entitled to request a hearing on the proposed debarment prior to debarment unless the person waives the right to a hearing.

3. Request for hearing. The person proposed for debarment and any affected affiliates shall file a written request for a hearing within ten (10) days of receipt of the notice of proposed debarment.
4. Appearance by affiliate. If the legal services officer proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.

#### F. Suspension

If adequate grounds for debarment and compelling reasons for suspension exist, the Administrative Director may suspend a person from receiving any contract award not to exceed six months while debarment is pending. A person suspended pending debarment shall be entitled to a hearing upon request made within seven days after receipt of the suspension notice. The hearing is to be held within sixty (60) days of the suspension date unless the Administrative Director in his sole discretion determines there is good cause for extension of time.

#### G. Hearing

1. Hearing officer. If a hearing is required or permitted under these Rules, the Administrative Director shall act as a hearing officer or appoint as a hearing officer a person not previously involved in the matter appealed.
2. Time limit. The hearing officer shall provide the parties twenty days notice and conduct a hearing within forty-five (45) days from the date the matter is assigned for hearing, unless the Administrative Director in his sole discretion determines there is good cause for extension of time.
3. Procedures.
  - a. The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.
  - b. The hearing officer may take any and all fair and reasonable steps to expedite resolution of factual issues including:
    - (i) Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
    - (ii) Require parties to state their positions concerning the various issues in the proceeding;
    - (iii) Require parties to produce for examination those relevant witnesses and documents under their control;

- (iv) Rule on motions and other procedural items on matters pending before such officer;
  - (v) Regulate the course of the hearing and the conduct of participants;
  - (vi) Establish time limits for submission of motions or memoranda;
  - (vii) Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
    - (a) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
    - (b) Excluding all testimony of an unresponsive or evasive witness; and
    - (c) Expelling person from further participation in the hearing;
  - (viii) Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
  - (ix) Administer oaths or affirmations.
- c. A transcribed record of the hearing shall be made available at cost to the requesting party.
4. Hearing officer's recommendation. The hearing officer shall make a recommendation to the Administrative Director based on the evidence presented within twenty (20) days after the hearing is concluded. The recommendation shall include findings of fact and conclusions of law. The hearing officer's recommendation shall be provided to all parties in person or by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The parties may submit objections to the hearing officer's recommendation to the Administrative Director within five (5) work days of receipt of the recommendation.
5. Decision on appeal.
- a. The Administrative Director may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions or make any other appropriate disposition.
  - b. The Administrative Director shall send the decision to all parties by personal service or certified mail, return receipt requested or by any other method that provides evidence of receipt within ten (10) days after the conclusion of the hearing or, if a hearing officer was appointed, after the deadline for filing objections to the hearing officer's recommendation.

## H. Reinstatement

1. Request for reinstatement. Any debarred person may request reinstatement by submitting a petition to the Administrative Director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated. The Administrative Director may require a hearing on the request.
2. Decision. The Administrative Director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a written determination that the cause upon which the debarment is based no longer exists or has been substantially mitigated.

## I. Authority to Delegate

The Administrative Director may delegate the Administrative Director's responsibilities under this policy to another person not previously involved in the solicitation or contract administration.

## J. Exhaustion of Administrative Remedies and Judicial Review

All decisions of the Administrative Director shall be final. Parties may seek judicial review through a petition for a special action within 35 days after entry of the Administrative Director's final order. The petition for special action shall be pursuant to the Arizona Rules of Procedure for Special Actions.