

SUPERIOR COURT IN MARICOPA COUNTY
PROCUREMENT PROTEST, CONTRACT CLAIM, DEBARMENT,
AND APPEALS PROCEDURE

Effective November 15, 2013

I. Definitions

- A. “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-subsidary relationship, or persons that are similarly affiliated.
- B. “Award” means a determination by the court that it is entering into a contract with one or more offerors.
- C. “Day” means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified
- D. “Debarment” means an action taken by the court administrator that prohibits a person from participating in the court’s procurement process.
- E. “In writing” has the same meaning as “written” or “writing” in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
- F. “Interested party” means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
- G. “Offeror” means a person who responds to a solicitation.
- H. “Procurement file” means the official records file of the procurement officer or contract administrator and shall include (electronic or paper):
 - 1. List of notified vendors,
 - 2. Final solicitation,

3. Solicitation amendments,
4. Bids and offers,
5. Final proposal revisions,
6. Discussions,
7. Clarifications,
8. Final evaluation reports, and
9. Additional information, if requested by the procurement officer or contract administrator.

I. “Procurement Rules for the Judicial Branch” means the procurement rules adopted by the Arizona Supreme Court.

J. “Solicitation” means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the court to invite a person to submit an offer.

K. “Suspension” means an action taken by the court administrator that temporarily disqualifies a person from participating in a court procurement process.

II. Protest of Solicitations and Contract Awards

A. Content. Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract. The interested party shall file the protest in writing with the procurement officer or contract administrator, with a copy to the court administrator, and shall include the following information:

1. The name, address and telephone number of the interested party;
2. The signature of the interested party or its representative;
3. Identification of the solicitation or contract number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

B. Time Limits.

1. If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
2. For all other protests, the interested party shall file the protest within 10 days after the procurement officer or contract administrator makes the procurement file available for public inspection.
3. The interested party may submit a written request to the procurement officer or contract administrator for an extension of the time limit for protest filing set forth above. 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 the court that resulted in the interested party being unable to submit the protest within the 10 days. The procurement officer or contract administrator 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.

C. Notice. The procurement officer or contract administrator shall immediately give notice of a protest to all offerors.

D. Stay of Procurement during Protest.

1. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the procurement officer or contract administrator shall make a written determination to either:
 - a. Proceed with the award or contract performance, or
 - b. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the court.
2. The procurement officer or contract administrator shall provide the interested party, court administrator, and other interested parties with a copy of the written determination.
3. The procurement officer or contract administrator may stay all or part of the procurement if it is determined that there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the court. Determination of the stay decision shall be issued no later than the time of

issuance of a procurement officer's or contract administrator's decision regarding the protest.

4. If the procurement officer or contract administrator denies a stay, the protester may request a procurement stay from the court administrator. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the procurement officer or contract administrator.

E. Resolution of Solicitations and Contract Awards Protest. The procurement officer or contract administrator has the authority to resolve a protest.

1. The procurement officer or contract administrator shall issue a written decision within 14 days after a protest has been filed. The decision of the procurement officer or contract administrator shall contain the basis for the decision and a statement that the decision may be appealed to the court administrator within 30 days from receipt of the decision.
2. The procurement officer or contract administrator shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the court administrator.
3. The procurement officer or contract administrator may submit a written request to the court administrator for an extension of the time limit for decisions under subsection 1 above. The court administrator 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 decision, not to exceed an additional 30 days. The court administrator shall notify the procurement officer or contract administrator and the interested party in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
4. If the procurement officer or contract administrator fails to issue a decision within the time limits, the interested party may proceed as if the procurement officer or contract administrator had issued an adverse decision.

F. Remedies by the Procurement Officer or Contract Administrator.

1. If the procurement officer or contract administrator sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the Procurement Rules for the Judicial Branch, the procurement officer or contract administrator shall implement an appropriate remedy.

2. In determining an appropriate remedy, the procurement officer or contract administrator shall consider all the circumstances surrounding the procurement or proposed procurement including:
 - a. The seriousness 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.
3. A procurement officer or contract administrator may implement any of the following appropriate remedies:
 - 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. Render such other relief as determined necessary to ensure compliance with the Procurement Rules for the Judicial Branch.

G. Appeals to the Court Administrator

1. An interested party may appeal the decision entered or deemed to be entered by the procurement officer or contract administrator to the court

administrator within 30 days after the date the decision is received or deemed received. The interested party shall file a copy of the appeal with the court administrator and the procurement officer or contract administrator.

2. The interested party shall file the appeal in writing and shall include the following information:
 - a. A copy of the protest initially filed with the procurement officer or contract administrator;
 - b. A copy of the decision of the procurement officer or contract administrator; and
 - c. The precise factual or legal error in the decision of the procurement officer or contract administrator from which an appeal is taken.
3. The court administrator may consider any appeal that is not filed timely if:
 - a. The interested party shows good cause; or
 - b. The court administrator finds there is good cause.

H. Stay of Procurement during Appeal to Court Administrator. If a stay is in place, the filing of an appeal shall automatically continue the stay, unless the Court Administrator makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the court.

I. Procurement Officer's or Contract Administrator's Report.

1. The procurement officer or contract administrator shall file a complete report on the appeal with the court administrator within 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The procurement officer or contract administrator shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
 - a. The appeal;
 - b. The offer submitted by the interested party or portions relevant to the appeal;

- c. The offer of the firm that is being considered for award or portions relevant to the appeal;
- d. The solicitation, including the specifications or portions relevant to the appeal;
- e. The abstract of offers or relevant portions;
- f. Any other documents that are relevant to the protest; and
- g. A statement by the procurement officer or contract administrator setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

J. Remedies by the Court Administrator

- 1. If the court administrator sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination, or an award does not comply with procurement statutes and regulations, the court administrator shall implement remedies as subsection II. F.3 above.

K. Dismissal before Hearing

- 1. The court administrator shall dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
 - a. The appeal does not state a valid basis for protest;
 - b. The appeal is untimely; or
 - c. The appeal attempts to raise issues not raised in the protest.
- 2. The court administrator shall notify the interested party and procurement officer or contract administrator in writing of a determination to dismiss an appeal before hearing.

L. Hearing

- 1. The court administrator has the discretion as to whether to hold a hearing. No hearing is necessary for appeals in which no fact is contested.

2. If the court administrator determines a hearing is necessary, the court administrator shall appoint a hearing officer who was not previously involved in the matter appealed.
3. 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 court administrator determines there is good cause for extension of time.
4. 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. Any hearing shall be recorded and a transcript can be ordered, at the cost to the party ordering the transcript.

5. The hearing officer shall make a recommendation to the court administrator 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 court administrator within five (5) work days of receipt of the recommendation.

6. Decision on Appeal.

a. The court administrator 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 court administrator shall send the decision to all parties by 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.

M. Exhaustion of Administrative Remedies and Judicial Review. All appeal decisions of the court administrator shall be final. Parties may seek judicial review through a petition for a special action within 35 days after entry of the court administrator's final order. The petition for special action shall be pursuant to the Arizona Rules of Procedure for Special Actions.

III. Controversies Involving Contract Claims Against the Court

A. Claim. A claimant shall file a contract claim with procurement officer or contract administrator, with a copy to the court administrator, within 180 days after the claim arises. The claim shall include the following:

1. The name, address, and telephone number of the claimant;
2. The signature of the claimant or its representative;
3. The solicitation or contract number;
4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
5. The form and dollar amount of the relief requested.

B. Resolution. The procurement officer or contract administrator shall have the authority to settle and resolve contract claims, except that procurement officer or contract administrator shall receive prior approval of the court administrator for each settlement.

C. Procurement Officer's or Contract Administrator's Decision.

1. If a claim cannot be resolved, the procurement officer or contract administrator shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer or contract administrator shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
2. The procurement officer or contract administrator shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the court administrator. The decision shall include:
 - a. A description of the claim;
 - b. A reference to the pertinent contract provision;
 - c. A statement of the factual areas of agreement or disagreement;
 - d. A statement of the procurement officer's or contract administrator's decision, with supporting rationale;

- e. A paragraph which substantially states: “This is the final decision of the procurement officer or contract administrator. This decision may be appealed to the court administrator. If you appeal, you must file a written notice of appeal containing the required information with the court administrator and the procurement officer or contract administrator within 30 days from the date you receive this decision.”

D. Issuance of a Timely Decision. If the procurement officer or contract administrator fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the procurement officer or contract administrator had issued an adverse decision.

E. Appeals and Reports to the Court Administrator

1. The claimant may appeal the final decision of the procurement officer or contract administrator to the court administrator within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the court administrator and the procurement officer or contract administrator.
2. The claimant shall file the appeal in writing and shall include the following:
 - a. A copy of the decision of the procurement officer or contract administrator;
 - b. A statement of the factual areas of agreement or disagreement; and
 - c. The precise factual or legal error in the decision of the procurement officer or contract administrator from which an appeal is taken.
3. The procurement officer or contract administrator shall file a complete report on the appeal with the court administrator within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the procurement officer’s or contract administrator’s decision, if applicable, and any other documents that are relevant to the claim.

F. Hearing

1. The court administrator has the discretion as to whether to hold a hearing. No hearing is necessary for appeals in which no fact is contested.
2. If the court administrator determines a hearing is necessary, the court administrator shall appoint a hearing officer who was not previously involved in the matter appealed.
3. 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 court administrator determines there is good cause for extension of time.
4. The procedures for a hearing in subsection II.L.4 and II.L.5 above shall apply to any hearing held on a contract claim.
5. Decision on Appeal.
 - a. The court administrator 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 court administrator shall send the decision to all parties by 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.

G. Exhaustion of Administrative Remedies and Judicial Review. All contract claim decisions of the court administrator shall be final. Parties may seek judicial review through a petition for a special action within 35 days after entry of the court administrator's final order. The petition for special action shall be pursuant to the Arizona Rules of Procedure for Special Actions.

IV. Debarments and Suspensions

- A. The court administrator has the sole authority to debar or suspend a person from participating in procurements issued by the Superior Court of Arizona in Maricopa County.
- B. The causes for debarment or suspension include the following:

1. Conviction of any person or any subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 2. Conviction of any person or any subsidiary or affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a contractor.
 3. Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.
 4. Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, such as either of the following:
 - a. Knowingly fails without good cause to perform in accordance with the specification or within the time limit provided in the contract.
 - b. Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
 5. Any other cause deemed to affect responsibility as a contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity for any cause listed in rules of the court administrator.
- C. Initiation of Debarment. Upon receipt of information concerning a possible cause for debarment, the court administrator shall investigate the possible cause. If the court administrator has a reasonable basis to believe that a cause for debarment exists, the court administrator may propose debarment under this section.
- D. Period of Debarment
1. The court administrator shall not establish the period of time for a debarment that exceeds five years from the date of the debarment determination.

2. If debarment is based solely upon debarment by another governmental agency, the court administrator may establish that the period of debarment is to run concurrently with the period established by the other debarring agency.

E. Notice of Debarment and Hearing

1. If debarment is proposed, the court administrator shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, or any other method that provides evidence of receipt. The notice shall state that the person and affected affiliates have the right to a hearing to contest the proposed debarment.
2. The person proposed for debarment and any affected affiliates shall file a written request for a hearing within 10 days of receipt of the court administrator's notice of proposed debarment.
3. The hearing shall be conducted pursuant to the procedures in subsection II.L.3, II.L.4, and II.L.5.
4. Decision after Hearing.
 - a. The court administrator 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 court administrator shall send the decision to all parties by certified mail, return receipt requested or by any other method that provides evidence of receipt within thirty (30) 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.

F. Imputed Knowledge

1. The court administrator may attribute improper conduct to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
2. The court administrator may attribute improper conduct of a person or its affiliate having a contract with a contractor to the contractor for purposes of debarment where the impropriety occurred in connection with the

person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

G. Reinstatement

1. The court administrator may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.
2. Any debarred person may request reinstatement by submitting a petition to the court administrator supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
3. The court administrator may require a hearing on the request for reinstatement.
4. The court administrator shall make a written decision on reinstatement within thirty (30) days after the request is filed and specify the factors on which it is based.
5. Reinstatement decisions by the court administrator are not subject to review.

H. Limited Participation. The court administrator may allow a debarred person to participate in Superior Court of Arizona in Maricopa County contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the court. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

I. Suspension

1. If the court administrator determines that reasonable grounds for debarment exist, the court administrator may suspend a person from receiving any award.
2. For purposes of suspension, a person's conduct may be attributed to an affiliate or another person under
3. The court administrator shall not suspend a person pending debarment unless compelling reasons require suspension to protect the court's interests.

J. Period and Scope of Suspension. Unless otherwise agreed to by the parties, the court administrator shall not implement a period of suspension of more than 35 days without satisfying the notice requirements below.

K. Notice, Hearing, Determination, and Appeal

1. The court administrator shall notify the person suspended by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
2. The notice of suspension shall state:
 - a. The basis for suspension;
 - b. The period, including dates, of the suspension;
 - c. That offers received from the person will not be considered; and
 - d. That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the court administrator within thirty (30) days after receipt of the notice.
3. Within thirty (30) days receipt of the notice of suspension, the suspended party may file a written request for hearing with the court administrator. The appeal shall include the following information:
 - a. A copy of the decision of the court administrator; and
 - b. The precise factual or legal error in the decision from which the appeal is taken.
4. The hearing shall be conducted pursuant to the procedures in subsection II.L.3, II.L.4, and II.L.5.
5. Decision after Hearing.
 - a. The court administrator 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 court administrator shall send the decision to all parties by certified mail, return receipt requested or by any other method that provides evidence of receipt within thirty (30) 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.

L. Master List

1. The court administrator shall maintain a master list of debarments, suspensions, and voluntary exclusions under this policy.
 2. The master list shall show at a minimum, the following information:
 - a. The names and vendor numbers of those persons whom the court has debarred or suspended under this policy;
 - b. The authority for the action;
 - c. The period of debarment or suspension, including the expiration date;
 - d. The name of the debarring or suspending agency, if the court's debarment or suspension is based on debarment or suspension by another governmental agency; and
 - e. A separate section listing persons voluntarily excluded from participation in court contracts.
- V. Authority to Delegate. The court administrator may delegate the court administrator's responsibilities under this policy to another person not previously involved in the solicitation or contract administration.