

Arizona Administrative Code (A.A.C.)
Arizona School District Procurement Rules

BID PROTESTS

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Section

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R7-2-1142. Filing of a protest

- A. Any interested party may protest a solicitation issued by the school district, or the proposed award or the award of a school district contract.
- B. Content of protest. The protest shall be in writing and shall include the following information:
 - 1. The name, address and telephone number of the protester;
 - 2. The signature of the protester or the protester's 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.
- C. The protester shall supply promptly any other information requested by the district representative.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1143. Time for filing protests

- A. Protests concerning improprieties in a solicitation.
 - 1. Protests based upon alleged improprieties in a solicitation that are apparent before the bid opening shall be filed before bid opening. Protests based upon alleged improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals.
 - 2. In procurements requesting proposals, protests concerning improprieties that do not exist in the initial solicitation but that are subsequently incorporated into the solicitation shall be filed by the next closing date for receipt of proposals following the incorporation.
- B. In cases other than those covered in subsection (A) of this Section, protests shall be filed within 10 days after the protester knows or should have known the basis of the protest, whichever is earlier.
- C. Protests shall be filed with the district representative.
- D. If the protester shows good cause and it is in the best interests of the school district, the district representative may consider any protest that is not filed timely.
- E. The district representative shall immediately give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties.
- F. At any time the district representative or hearing officer may refer the protest to the governing board for resolution in accordance with R7-2-1152.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1144. Stay of procurements during the protest

If a protest is filed before the award of a contract the award may be made, unless the district representative makes a determination that the award of the contract is contrary to the best interests of the school district.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1145. Decision by the district representative

- A. The district representative shall issue a written decision within 14 days after a protest has been filed pursuant to R7-2-1142. The decision shall include:
 - 1. A statement of the decision of the district representative with supporting rationale; and
 - 2. A paragraph substantially as follows:

"This is the decision of the district representative of the _____ School District. The decision may be appealed to the governing board of this school district. If you appeal, you must file a written notice of appeal with the district representative within 10 days from the date of the decision."
- B. The district representative shall furnish a copy of the decision to the protester by any method that provides evidence of receipt.
- C. The time limit for decisions set forth in subsection (A) of this Section may be extended by the district representative for good cause for a reasonable time not to exceed 30 days. The district representative shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- D. If the district representative fails to issue a decision within the time limits set forth in subsections (A) or (C) of this Section, the protester may proceed as if the district representative had issued an adverse decision.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1146. Remedies

- A. If the district representative sustains the protest in whole or part and determines that a solicitation, proposed contract award, or contract award does not comply with this Article, the school district shall implement an appropriate remedy.
- B. In determining an appropriate remedy, the district representative shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the school district, the urgency of the procurement and the impact of the relief on the mission of the school district.
- C. An appropriate remedy may include one or more of the following:
 - 1. Decline to exercise an option to renew under the contract;
 - 2. Terminate the contract;
 - 3. Reissue the solicitation;
 - 4. Issue a new solicitation;
 - 5. Award a contract consistent with procurement statutes and regulations; or
 - 6. Such other relief as is determined necessary to ensure compliance with this Article.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1147. Appeals to the governing board

- A. An appeal from a decision entered or deemed to be entered by the district representative shall be filed with the district representative within 10 days from the date of decision.
- B. Content of appeal. The appeal shall contain:
 - 1. The information set forth in R7-2-1142(B); and
 - 2. The precise factual or legal error in the decision of the district representative from which an appeal is taken.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1148. Notice of appeal

The district representative shall within three working days give notice of the filing of the appeal to the governing board and the successful contractor is award has been made.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1149. Stay of procurement during appeal

If an appeal is filed before an award of contract and the award of the contract was stayed by the district representative pursuant to R7-2-1144, the filing of an appeal shall automatically continue the stay unless the hearing officer makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the school district.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1150. District representative's response

The district representative shall file a complete response to the appeal with the hearing officer within seven days from the date the appeal is filed. At the same time, the district representative shall furnish a copy of the response to the appellant and to any interested party.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1151. Dismissal before hearing

The hearing officer shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

1. The appeal does not state a valid basis for protest; or
2. The appeal is untimely pursuant to R7-2-1147(A).

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1152. Hearing

Hearings on appeals of bid protest decisions shall be conducted pursuant to R7-2-1181 and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1153. Remedies

If the governing board sustains the appeal in whole or part and determines that a solicitation, proposed award, or award does not comply with procurement statutes and regulations, remedies shall be implemented pursuant to R7-2-1146.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

CONTRACT CLAIMS AND CONTROVERSIES

R7-2-1155. Resolution of contract claims and controversies

The district representative shall have the authority granted to the district representative by the governing board to settle and resolve contract claims and controversies including claims relating to assignees of the contractor. Appeals from decisions of the district representative may be made to the hearing officer pursuant to R7-2-1158.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1156. District representative's decision

- A. If a controversy cannot be resolved by mutual agreement, the district representative shall issue a written decision within no more than 60 days from receipt of the contractor's written request for a decision.
- B. In the case of construction contracts which provide that the architect shall resolve disputes, no protest may be filed under subsection (A) of this Section until the architect makes a decision.
- C. Decision of the district representative. The district representative shall furnish a copy of the decision to the contractor by any method that provides evidence of receipt. The decision shall include:
 1. A statement of the district representative's decision, with supporting rationale; and
 2. A paragraph substantially as follows:

"This is the decision of the district representative of the _____ School District. This decision may be appealed to a hearing officer. If you appeal, you must file a written notice of appeal with the district representative within 10 days from the date of decision."

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Amended by final rulemaking at 6 A.A.R. 3750, effective September 8, 2000 (Supp. 00-4).

R7-2-1157. Issuance of a timely decision

- A. A time limit for decisions set forth in R7-2-1156(A) may be extended for good cause for a reasonable time not to exceed 30 days. The district representative shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.

- B. If the district representative fails to issue a decision within 30 days after the request is filed or within the time prescribed under subsection (A) of this Section, the contractor may proceed as if the district representative had issued an adverse decision.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

R7-2-1158. Appeals to a hearing officer

- A. An appeal from a decision entered or deemed to be entered by the district representative on a contract claim or controversy shall be filed with the district representative within 10 days from the date of decision.
- B. Content of appeal. The appeal shall contain the basis for the precise factual or legal error in the decision of the district representative from which an appeal is taken.
- C. All costs associated with conducting a hearing, including the costs of the hearing officer, shall be paid by the school district. If the hearing officer decides in favor of the school district, the other party shall reimburse the school district for the costs of the hearing.
- D. The Executive Director of the State Board of Education ("Executive Director") shall prepare and maintain a list of individuals who meet the qualifications specified in R7-2-1185 to serve as hearing officers.
- E. A hearing officer may be selected by mutual agreement of both parties. If the parties are unable to mutually agree on a hearing officer, three hearing officers shall be selected randomly by the Executive Director and shall be screened to determine availability and possible bias. Once the Executive Director has selected three hearing officers who are available and show no evidence of bias, the three names shall be provided to both parties. Both parties have the opportunity to strike one name from the list provided, but must do so within 14 calendar days from the date on which the Executive Director provided the list to the parties. If after the time period for striking a hearing officer has passed and more than one person remains on the list, the Executive Director shall select one of the remaining individuals on the list as the hearing officer unless either party objects for cause and provides such reason in writing to the Executive Director. If after the time period for striking a hearing officer has passed and there is only one person remaining on the list, the remaining individual shall be named as the hearing officer unless either party objects for cause and provides such reason in writing to the Executive Director. Objections for cause shall require specific evidence that the individual does not meet the criteria specified in R7-2-1185. The Executive Director shall review the evidence submitted and determine the qualifications of the individual. If the Executive Director determines that the individual is not qualified to serve as the hearing officer, the Executive Director shall repeat the process and select three additional hearing officers to be provided to the parties.

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Amended by final rulemaking at 6 A.A.R. 3750, effective September 8, 2000 (Supp. 00-4).

R7-2-1159. Hearing

Hearings on appeals of contract claim and controversy decisions shall be conducted pursuant to R7-2-1181 and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).

Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).