

## **Procurement Appeals and Oversight:**

### ***Procurement Protest and Debarment Appeals***

#### **Appeal of Protest Decision to State Procurement Policy Board—**

A party to a protest may appeal the protest decision to the Procurement Policy Board by filing a written notice of appeal with the chair of the Procurement Policy Board including the person's address of record and email address of record and a copy of the written decision and by complying with the security requirement discussed below. The appeal must be filed either within seven days after the written decision on the protest is personally served on the party or the party's representative or emailed or mailed to the address or email address of record provided by the party, or within 30 days of a written request for a final written decision (or any longer period which the parties agreed to), if a final written decision has not been issued in that time period.

No appeal of a protest decision may be filed unless a decision has been issued or the 30-day period (or longer agreed-upon period) has expired without issuance of a written decision.

*Utah Code § 63G-6a-1702(2)(a) (2014)*

#### **Appeal Limited to Grounds Stated in Protest Document—**

A person who files an appeal of a protest decision is limited to appealing on the grounds specified in the protest filing.

*Utah Code § 63G-6a-1702(3) (2014)*

#### **Appeal of Debarment or Suspension—**

A person debarred or suspended may appeal the decision to the Procurement Policy Board by filing a written notice of appeal with the chair of the Procurement Policy Board including the person's address of record and email address of record and a copy of the order of debarment or suspension and by complying with the security requirement discussed below.

*Utah Code 63G-6a-1702(2)(b) (2014)*

#### **Appeal Security—**

Subject to waiver rules which may be made by the Procurement Policy Board, a person who files an appeal to that Board must, before the expiration of the time for filing an appeal, pay a security deposit or post a bond with the office of the Protest Officer as provided for below.

1. For an appeal relating to an invitation for bids or request for proposals:
  - a. \$20,000, if the total contract value is under \$500,000;

- b. \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;
  - c. \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
  - d. \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
  - e. \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
  - f. \$320,000, if the total contract value is \$8,000,000 or more but less than \$16,000,000;
  - g. \$600,000, if the total contract value is \$16,000,000 or more but less than \$32,000,000;
  - h. \$1,100,000, if the total contract value is \$32,000,000 or more but less than \$64,000,000;
  - i. \$1,900,000, if the total contract value is \$64,000,000 or more but less than \$128,000,000;
  - j. \$3,500,000, if the total contract value is \$128,000,000 or more but less than \$256,000,000;
  - k. \$6,400,000, if the total contract value is \$256,000,000 or more but less than \$512,000,000; and
  - l. \$10,200,000, if the total contract value is \$512,000,000 or more;
- or
- 2. \$20,000, for an appeal:
    - a. relating to any type of procurement process other than an invitation for bids or request for proposals;
    - b. relating to an invitation for bids or request for proposals, if the estimated total contract value cannot be determined; or
    - c. of a debarment or suspension.

For an appeal relating to an invitation for bids, the estimated total contract value shall be based on:

- 1. the lowest responsible and responsive bid amount for the entire term of the contract, excluding any renewal period, if the bid opening has occurred;
- 2. the total budget for the procurement item for the entire term of the contract, excluding any renewal period, if bids are based on unit or rate pricing; or
- 3. if the contract is being rebid, the historical usage and amount spent on the contract over the life of the contract.

For an appeal relating to a request for proposals, the estimated total contract value shall be based on:

1. the lowest cost proposed in a response to a request for proposals, considering the entire term of the contract, excluding any renewal period, if the opening of proposals has occurred;
2. the total budget for the procurement item over the entire term of the contract, excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or
3. if the contract is being reissued, the historical usage and amount spent on the contract over the life of the contract that is being reissued.

The Protest Officer shall retain the security deposit or bond until the appeal process is completed. The Protest Officer shall deposit a security deposit into an interest-bearing account and if the deposit is not forfeited return the deposit and the accrued interest to the person. The Protest Officer shall return the bond to the individual if it is not forfeited. A security deposit or bond is forfeited if the person providing it fails to ultimately prevail on appeal and the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

*Utah Code § 63G-6a-1703 (2014)*

#### **Appeal to Utah Court of Appeals—**

Either the District or a person who receives an adverse decision from a procurement appeals panel may appeal the decision to the Utah Court of Appeals within seven days after the decision is issued. However, the District may not appeal the decision of the procurement appeals panel unless the appeal is recommended by the District Protest Officer involved.

*Utah Code § 63G-6a-1802 (2014)*