

	MARICOPA COUNTY PROCUREMENT CODE	OFFICE OF PROCUREMENT SERVICES	
		Article 9	Date 02/24/2021
SUBJECT		LEGAL AND CONTRACTUAL REMEDIES	

MC1-901 RULES OF PROCEDURE

Rules of procedure providing for the expeditious administrative review of all Contract claims or Procurement controversies, both before the Purchasing Agency and through an appeal, are set forth in this Article.

MC1-902 DEBARMENT AND SUSPENSION OF CONTRACTORS

- A. The County Manager, at the recommendation of staff, for cause, may suspend and/or debar any Person from consideration for Award of a Contract pursuant to this Code. The Suspension may not exceed more than six months and a Debarment may not exceed more than three years for each offense.

- B. The causes for Debarment or Suspension shall include, but are not limited to, 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 its political subdivision or any other State for:
 - a. Embezzlement
 - b. Theft
 - c. Fraudulent schemes and practices
 - d. Bid rigging
 - e. Perjury
 - f. Forgery
 - g. Bribery
 - h. Falsification or destruction of records
 - i. Receiving stolen property
 - j. 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

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serious as to justify Debarment or Suspension, such as either of the following:

- a. Knowingly fail, without good cause, to perform in accordance with the Specifications or within the time limits provided in the Contract.
 - b. Failure to perform or unsatisfactory performance in accordance with the terms of the Contract, except that failure to perform or unsatisfactory performance caused by the acts beyond the control of the Contractor shall not be considered to be a basis for Debarment or Suspension.
5. Any other cause deemed to affect responsibility as a Maricopa County Contractor, including Suspension or Debarment of such Contractor or any subsidiary or affiliate of such Contractor by another governmental entity.
- C. An administrative review shall be held by the County Manager or designee on any Person considered for Debarment or Suspension. A written notice to the Person considered for Debarment or Suspension shall be mailed at least 10 working Days prior to the administrative review and shall at the minimum include:
- 1. date, time, and place of the administrative review;
 - 2. statement of reasons for the recommended action; and
 - 3. a statement to the Person that they may attend and offer information on their behalf.
- D. After a decision has been determined, a written notice shall be sent to the Person citing the:
- 1. Action taken and the effective date and length of time the action shall be in effect.
 - 2. Reasons for the action taken.

MC1-903 JUDICIAL REVIEW

The final decision of the County Manager or designee regarding Debarment or Suspension may be the subject of judicial review which shall be filed with the Superior Court in Maricopa County.

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MC1-904 VIOLETION; CLASSIFICATION; LIABILITY; ENFORCEMENT AUTHORITY

- A. A Person who Contracts for or purchases any Commodity, Services, Construction, or Construction Services without approval of the Board of Supervisors or in a manner contrary to the requirements of this Code or the Arizona Revised Statutes may be personally liable for the recovery of all public monies paid plus 20 percent of such amount and legal interest from the date of payment and all costs and damages arising out of the violation. (A.R.S. 41-2616)
- B. A Person who intentionally or knowingly Contracts for or purchases any Commodity, Services, or Construction pursuant to a scheme or artifice to avoid the requirements of this Code is guilty of a Class 4 felony.
- C. The Maricopa County Attorney on behalf of Maricopa County shall enforce the provisions of this Code.

MC1-905 PROTEST AND APPEALS OF CONTRACT AWARDS

- A. Filing
 - 1. Protests are to be Filed with the Procurement Officer issuing the Solicitation or Contract. A written decision will be made within 14 Days after the protest has been filed. The decision shall contain an explanation of the basis of the decision.
 - 2. Appeals are to be Filed with the Procurement Officer's respective department director within seven Days from receipt of the Procurement Officer's decision. A written decision will be made within 14 Days after the appeal has been filed. The decision shall contain an explanation of the basis of the decision and shall be the County's final determination.
- B. Time for filing protests, appeals, and review of Contract Awards
 - 1. Protests based upon alleged improprieties in a Solicitation that are apparent before the deadline for submission of a response to the Solicitation shall be Filed before the deadline or within 10 Days after the protestor knows or should have known of the alleged impropriety, whichever is earlier.
 - 2. In cases where the alleged improprieties are not apparent before the deadline for submission of a response to the Solicitation, protests shall be Filed within 10 Days after the protester knows or should have known the basis of the protest, and no later than the Award of the Solicitation

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3. In all cases not covered by sections MC1-905 (B) (1) and (2), the protest shall be Filed within 10 Days after Contract Award.
 4. If the protester shows good cause why the above time requirements could not be met, the Procurement Officer may consider any protest that is not Filed timely.
 5. Notice of protesting action shall be given to the successful Contractor if the Award has been made or, if no Award has been made, to the recommended Contractor.
 6. If the protest is Filed before the Award of Contract, the Award shall be stayed unless a Written Determination is made that the Award of the Contract without delay is necessary to protect a substantial interest of Maricopa County.
 7. The time limit for decisions set forth herein may be extended, not to exceed 30 Days, without consent of the protester. The protester shall be notified in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
 8. The decision shall be furnished to the protester or appellant by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- C. The following administrative process details the procedure to be followed for protests and appeals of Contract Awards. Any participating Respondent or Contractor may protest the proposed Award or the Award of a Maricopa County Contract or any dispute related to their Contract. The content of the protest, appeal, or dispute 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 their representative.
 3. Identification of the Purchasing Agency and the Solicitation or Contract number.
 4. A detailed statement of the legal and/or factual grounds, including copies of relevant documents.
 5. The form of relief requested.

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D. Remedies

1. Appropriate remedies may include one or more of the following:
 - a. Terminate the Contract.
 - b. Reject and reissue the Solicitation.
 - c. Issue a new Solicitation.
 - d. Award a Contract consistent with this Code.
 - e. Decline to exercise an option to renew under the Contract.
 - f. Amend the Solicitation.
 - e. Such other relief as is determined necessary.

MC1-906 CONTRACT DISPUTES

- A. Except as may otherwise be provided for by law, or otherwise specifically agreed to by the contracting parties, any dispute not involving a question of law arising during Contract performance that is not resolved between the parties within a reasonable time shall be submitted to the following Maricopa County's Contract disputes process:
1. Disputes must be Filed with the Contract administrator administering the Contract, if one has been appointed, or if not, with the Procurement Officer, within 10 Days from the date the Contractor knew or should have known the basis of the dispute.
 2. The Contract administrator or Procurement Officer, as applicable, shall respond in writing to the dispute within 14 Days.
 3. The Contractor may abide by the decision or may appeal the decision to the applicable director within seven Days.