

Chapter 6

Legal and Contractual Remedies

6.101 Authority to Resolve Protested Solicitations and Awards

(1) Right to Protest

Any actual or prospective bidder, offerer, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Head of the Purchasing Agency and copy the Chief Procurement officer. The protest shall be submitted in writing within 7 days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) Authority to Resolve Protests

The Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer shall have the authority to settle and resolve a protest of an aggrieved bidder, offerer, or contractor, actual or prospective, concerning the solicitation or award of a contract.

(3) Decision

If the protest is not resolved by mutual agreement, the Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer shall promptly issue a decision in writing. The decision shall:

- (a) state the reasons for the action taken; and
- (b) inform the protestant of its right to administrative review as provided in this Chapter.

(4) Notice of Decision

A copy of the decision under Subsection (3) of this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(5) Finality of Decision

A decision under Subsection (3) of this section shall be final and conclusive, unless fraudulent, or:

- (a) Any person adversely affected by the decision appeals administratively to the Procurement Review Board in accordance with Section 6.204, Protest of Solicitations or Awards.

(5) Stay of Procurements During Protests

In the event of a timely protest under Subsection (1) of this section, the State shall not proceed further with the solicitation or with the award of the contract until the Chief Procurement Officer, after consultation with the head of the using agency or the head of a purchasing agency, makes a written determination that the award of the contract

without delay is necessary to protect substantial interests of the State.

6.101.01 Definitions

6.101.01.1 Interested Party means an actual or prospective bidder, offerer, or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest.

6.101.01.2 Protestor means any actual or prospective bidder, offerer, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.

6.101.01.3 Attorney General shall mean the individual assigned by the Attorney General to provide legal assistance to the Department of Finance and Administration.

6.101.02 Complaint to Procurement Officer

Complainants should seek resolution of their complaints initially with the Procurement Officer or the office that issued the solicitation. Such complaints may be made verbally or in writing.

6.101.03 Filing of Protest

6.101.03.1 When Filed

Protests shall be made in writing to the head of the purchasing agency and copied to the Chief Procurement Officer, and shall be filed in duplicate within seven (7) days after the protestor knows or should have known of the facts giving rise thereto. A protest is considered filed when received by the Chief Procurement Officer or the head of a purchasing agency. Protests filed after the seven (7) day period shall not be considered.

6.101.03.2 Subject of Protest

Protestors may file a protest on any phase of solicitation or award including, but not limited to, specification preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer.

6.101.03.3 Form

To expedite handling of protests, the envelope should be labeled "Protest." The written protest shall include as a minimum the following:

- (a) the name and address of the protestor;
- (b) appropriate identification of the procurement and if a contract has been awarded, its number;
- (c) a statement of reasons for the protest; and
- (d) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

6.101.03.4 Notification of the Attorney General

The Chief Procurement Officer shall submit a copy of the protest to the Attorney General within three days of receipt of the written protest.

6.101.04 Requested Information; Time for Filing

Any additional information requested by any of the parties should be submitted within the time period established by the requesting source in order to expedite consideration of the protest. Failure of any party to comply expeditiously with a request for information by the Chief Procurement Officer or the head of a purchasing agency may result in resolution of the protest without consideration of any information which is untimely filed pursuant to such request.

6.101.05 Stay of Procurements During Protest

When a protest has been filed within 7 days and before an award has been made, the Chief Procurement Officer or the head of a purchasing agency shall make no award of the contract until the protest has been settled unless the Chief Procurement Officer makes a written determination, after consulting with the head of the using agency or the head of the purchasing agency, that the award of the contract without delay is necessary to protect substantial interests of the State.

6.101.06 Making Information on Protests Available

The Chief Procurement Officer or the head of a purchasing agency shall upon written request make available to any interested party information submitted that bears on the substance of the protest except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation. Persons who wish to keep such information submitted by them confidential should so request by specifically identifying such information within documents submitted, and indicating on the front page of each document that it contains such information. The availability of such information shall be in compliance with 1.301, Public Access to Procurement Information.

6.101.07 Decision by the Chief Procurement Officer or the Head of a Purchasing Agency**6.101.07.1 Time for Decisions**

A decision on a protest shall be made by the Chief Procurement Officer or the head of a purchasing agency as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, those set forth in Section 6.201.01, Determination that Solicitation or Award Violates Law, and Regulation 6.202, Remedies Prior to an Award.

6.101.08 Request for Reconsideration**6.101.08.1 Request**

Reconsideration of a decision of the Chief Procurement Officer or the head of a purchasing agency may be requested by the protestor, appellant, any interested party who submitted comments during consideration of the protest, or any agency involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds

upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

6.101.08.2 Time for Filing

Requests for reconsideration of a decision of the Chief Procurement Officer or the head of a purchasing agency shall be filed not later than 7 days after receipt of such decision.

6.101.08.3 Time for Acting

A request for reconsideration shall be acted upon as expeditiously as possible. The Chief Procurement Officer or the head of a purchasing agency may uphold the previous decision or reopen the case as such officer deems appropriate.

6.101.09 Effect of Judicial or Administrative Proceedings

The Chief Procurement Officer or the head of a purchasing agency will refuse to decide any protest when a matter involved is the subject of a proceeding before the Procurement Review Board or has been decided on the merits by the Board. If an action concerning the protest has commenced in court, the Chief Procurement Officer or the head of a purchasing agency shall not act on the protest but refer the protest to the Attorney General. This section shall not apply where the Board or a court requests, expects, or otherwise expresses interest in the decision of the Chief Procurement Officer or the head of a purchasing agency.

6.102 Authority to Debar or Suspend

(1) Authority

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer or the head of a purchasing agency, after consultation with the using agency and the Attorney General, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of two years. The same officer, after consultation with the using agency and the Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

(2) Causes for Debarment or Suspension

The causes for debarment or suspension include the following:

- (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (b) conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Mississippi contractor;
- (c) conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals;

- (d) violation of contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer or the head of a purchasing agency to be so serious as to justify debarment action:
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided 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;
- (e) any other cause the Chief Procurement Officer or the head of a purchasing agency determines to be so serious and compelling as to affect responsibility as a Mississippi contractor, including debarment by another governmental entity for any cause listed herein; and
- (f) for violation of the ethical standards set forth in Chapter 9 (Ethics in Public Contracting).

(3) Decision

The Chief Procurement Officer or the head of a purchasing agency shall issue a written decision to debar or suspend. The decision shall:

- (a) state the reasons for the action taken; and
- (b) inform the debarred or suspended person involved of its rights to administrative review as provided in this Chapter.

(4) Notice of Decision

A copy of the decision under Subsection (3) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(5) Finality of Decision

A decision shall be final and conclusive, unless fraudulent, or:

- (a) the debarred or suspended person commences an action in court; or
- (b) the debarred or suspended person appeals administratively to the Procurement Review Board in accordance with Section 6.205, Suspension or Debarment Procedures.

6.102.01 Application

This Regulation applies to all debarments or suspensions of persons from consideration for award of contracts imposed by the Chief Procurement Officer or the head of a purchasing agency.

6.102.02 Suspension**6.102.02.1 Initiation**

After consultation with the affected using agency, the Attorney General, and, where practicable, the contractor or prospective contractor who is to be suspended, and upon written determination by the Chief Procurement Officer or the head of a purchasing agency that probable cause exists for debarment as set forth in Section 6.102, Authority to Debar or Suspend, a contractor or prospective contractor shall be suspended. A notice of suspension, including a copy of such determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall state that:

- (a) the suspension is for the period it takes to complete an investigation into possible debarment including any appeals of a debarment decision but not for a period in excess of three months;
- (b) bids or proposals will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension; and
- (c) if a hearing has not been held, the suspended person may request a hearing in accordance with Section 6.102.04, Request for Hearing.

6.102.02.2 Effect of Decision

A contractor or prospective contractor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be ended by the officer who issued the notice of suspension by the Procurement Review Board but otherwise shall only be ended when the suspension has been in effect for three months or a debarment decision takes effect.

6.102.03 Initiation of Debarment Action

Written notice of the proposed debarment action shall be sent by certified mail, return receipt requested, to the contractor or prospective contractor. This notice shall:

- (a) state that debarment is being considered;
- (b) set forth the reasons for the action;
- (c) state that if the contractor or prospective contractor so requests, a hearing will be held, provided such request is received by the Chief Procurement Officer or the head of a purchasing agency within seven days after the contractor or prospective contractor receives notice of the proposed action.

Such notice shall also be sent to the Attorney General and the affected using agency. The affected using agency is that agency that has used the commodities or equipment supplied by the contractor. If more than one affected using agency is involved, the Chief Procurement Officer or the head of a purchasing agency may designate one or more representatives to be consulted in respect to this action.

6.102.04 Request for Hearing

A contractor or prospective contractor that has been notified of a proposed debarment action may request in writing that a hearing be held. Such request must be received by the official proposing the action within 7 days of receipt of notice of the proposed action under Section 6.102.03, Initiation of Debarment Action. If no request is received within the seven-day period, a final determination may be made as set forth in Section 6.102.08, Determination of Hearing Officer; Final Decision, after consulting with the Attorney General and the affected using agency.

6.102.05 Notice of Hearing

If a hearing is requested, the Chief Procurement Officer or the head of a purchasing agency may appoint a hearing officer to conduct the hearing and recommend a final decision. Otherwise, the Chief Procurement Officer or the head of a purchasing agency shall act as the hearing officer. The hearing officer shall send a written notice of the time and place of the hearing. Such notice shall be sent by certified mail, return receipt requested, and shall state the nature and purpose of the proceedings. Copies shall be sent to the Attorney General and the using agency.

6.102.06 Authority of Hearing Officer

The hearing officer, in the conduct of the hearing, has the power, among others, to:

- (a) hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motion;
- (b) require parties to state their positions with respect to the various issues in the proceeding;
- (c) require parties to produce for examination those relevant witnesses and documents under their control;
- (d) rule on motions, and other procedural items on matters pending before such officer;
- (e) regulate the course of the hearing and conduct of participants therein;
- (f) receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
- (g) fix time limits for submission of written documents in matters before such officer;
- (h) impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:
 - (i) refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
 - (ii) excluding all testimony of an unresponsive or evasive witness; and
 - (iii) expelling any party or person from further participation in the hearing;
- (i) take official notice of any material fact not appearing in evidence in the record, if such

fact is among the traditional matters of judicial notice.

6.102.07 Hearings Procedures

- (1) Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness was present. The hearing officer may require evidence in addition to that offered by the parties.
- (2) A hearing may be recorded but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record.
- (3) Opening statements may be made unless a party waives this right.
- (4) Witnesses shall testify under oath or affirmation. All witnesses may be cross-examined.

6.102.08 Determination of Hearing Officer; Final Decision

The hearing officer shall prepare a written determination recommending a course of action. Such determination shall be given to the Chief Procurement Officer or the head of a purchasing agency. Copies shall also be sent to the contractor or prospective contractor, the Attorney General, and the affected using agency. The contractor or prospective contractor shall have seven days to file comments upon the hearing officer's determination. The Chief Procurement Officer or the head of a purchasing agency may request oral argument. After consultation with the affected using agency and the Attorney General, the Chief Procurement Officer or the head of a purchasing agency shall issue a final decision. Both the hearing officer's determination and the final decision shall recite the evidence relied upon. When debarment is recommended or ordered, the reasons for such action, and to what extent affiliates are affected, shall be set forth. In addition, the final determination shall inform the debarred person of its rights to administrative review.

6.102.09 Effect of Debarment Decision

A debarment decision will take effect upon issuance and receipt by the contractor or prospective contractor. After the debarment decision takes effect, the contractor shall remain debarred until the debarment period specified in the decision expires.

6.102.10 Maintenance of List of Debarred and Suspended Persons

The Chief Procurement Officer shall maintain and update a list of debarred and suspended persons. All agencies of the State shall be supplied with this list. The Chief Procurement Officer shall send updates of this list to all agencies of the State as necessary. Such list shall be available to the public upon request.

6.103 Authority to Resolve Contract and Breach of Contract Controversies**(1) Applicability**

This section applies to controversies between the State and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(2) Authority

The Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer is authorized to settle and resolve a controversy described in Subsection (1) of this section.

(3) Decision

If such a controversy is not resolved by mutual agreement, the Chief Procurement Officer, the head of a purchasing agency, or the designee of either officer shall promptly issue a decision in writing. The decision shall:

- (a) state the reasons for the action taken; and
- (b) inform the contractor of its right to administrative review as provided in this Chapter.

(4) Notice of Decision

A copy of the decision under Subsection (3) of this section shall be mailed or otherwise furnished immediately to the contractor.

(5) Finality of Decision

The decision under Subsection (3) of this section shall be final and conclusive, unless fraudulent, or:

- (a) the contractor appeals administratively to the Procurement Review Board in accordance with Section 6.206, Contract and Breach of Contract Controversies.

(6) Failure to Render Timely Decision

If the Chief Procurement Officer, the head of a purchasing agency, or the designee of either officer does not issue the written decision required under Subsection (3) of this section within 60 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

6.103.01 General

The Mississippi Procurement Code establishes procedures and remedies to resolve contract and breach of contract controversies between the State and a contractor. It is the State's policy, consistent with the Code, to try to resolve all controversies by mutual agreement. In appropriate circumstances, informal discussions between the parties can aid in the resolution of differences

by mutual agreement and are encouraged. If such informal discussions do not resolve the controversy, individuals who have not participated substantially in the matter in controversy may be brought in to conduct discussions if this is feasible. Independent committees and panels which review controversies expeditiously and informally with a view to fair settlement possibilities also are encouraged at this stage.

6.103.02 Scope of Regulations

Section 6.103, Authority to Resolve Contract and Breach of Contract Controversies, is applicable to controversies between the State and a contractor which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification, reformation, or rescission. The word "controversy" is meant to be broad and all-encompassing. It includes the full spectrum of disagreements from pricing of routine contract changes to claims of breach of contract.

6.103.03 Delegation of Authority to Procurement Officer

6.103.03.1 Procurement Officer Authority

Subject to Subsection 6.103.03.2 of this section, unless a provision of the contract specifies that the authority to settle and resolve controversies and to issue decisions is reserved to the Chief Procurement Officer or the head of a purchasing agency, such authority is hereby delegated to the Procurement Officer. Within this Regulation, therefore, "Procurement Officer" denotes the person with such authority whether that is the Procurement Officer, the Chief Procurement Officer, the head of a purchasing agency, or a designee of such officer.

6.103.03.2 Prior Approval of Large Settlements

The settlement or resolution of controversies involving claims in excess of \$15,000 is subject to the prior written approval of the Chief Procurement Officer or the head of a purchasing agency. In such cases, the Procurement Officer shall prepare a recommended decision for the Chief Procurement Officer or the head of a purchasing agency.

6.103.04 Procurement Officer's Decision

6.103.04.1 Procedures Prior to Issuing Decision

When a controversy cannot be resolved by mutual agreement, the Procurement Officer shall, after written request by the contractor for a final decision, promptly issue a written decision. Before issuing a final decision, the Procurement Officer shall:

- (a) review the facts pertinent to the controversy; and
- (b) secure any necessary assistance from legal, fiscal, and other advisors.

6.103.04.2 Final Decision

The Procurement Officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and include in the decision:

- (a) a description of the controversy;

- (b) a reference to pertinent contract provisions;
- (c) a statement of the factual areas of agreement or disagreement;
- (d) a statement of the Procurement Officer's decision, with supporting rationale;
- (e) a paragraph substantially as follows:

"This is the final decision of the Procurement Officer. This decision may be appealed to the Procurement Review Board. If you decide to make such an appeal, you must mail or otherwise furnish written notice of appeal to the Procurement Review Board within 7 days from the date you receive this decision. A copy of the notice of appeal shall be furnished to the Procurement Officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference the decision from which the appeal is being taken, and identify the contract involved."

6.103.04.3 Failure to Timely Issue Final Decision

If the Procurement Officer does not issue a written decision within 60 days after written request by the contractor for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision has been received.

6.103.04.4 Payments of Amounts Found Due

The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party and where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment; provided, however, that any payment made shall be in compliance with State law.

6.103.05 Controversies Involving Mississippi Claims Against the Contractor

All controversies involving claims asserted by the State against a contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the Procurement Officer, the Chief Procurement Officer, or the head of a purchasing agency, as applicable.

6.103.06 Interest

6.103.06.1 Payable on Claims

Interest on amounts ultimately determined to be due to a contractor or the State shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later. Reference [Section 31-7-301 through 31-7-317 Mississippi Code](#).

6.103.06.2 Contract Clause

Each contract between the State and a contractor may contain a paragraph substantially similar to Subsection 6.103.06.1 of this section.

6.103.07 Disputes Clause

Language substantially similar to the following clause may be inserted in all Mississippi contracts:

"Disputes

- (1) All controversies between the State and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Chief Procurement Officer in writing, within 60 days after a written request by the contractor for a final decision concerning the controversy; provided, however, that if the Chief Procurement Officer does not issue a written decision within 60 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.
- (2) The Chief Procurement Officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- (3) Any such decision shall be final and conclusive, unless fraudulent, or:
 - (a) within the 7 days from the date of receipt of the decision, the contractor mails or otherwise furnishes written notice of appeal to the Procurement Review Board.
- (4) The contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this contract pending final resolution by the Procurement Review Board of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of the contract by the State; provided, however, that in any event the contractor shall proceed diligently with the performance of the contract where the Chief Procurement Officer has made a written determination that continuation of work under the contract is essential to the public health and safety."

6.201 Applicability of this Part

The provisions of this Part apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

6.201.01 Determination that Solicitation or Award Violates Law**6.201.01.1 Determination**

A solicitation or award may be in violation of the law due to actions of state employees, bidders, offerers, contractors, or other persons. After consultation with the Attorney General, the Chief Procurement Officer or the head of a purchasing agency may determine that a solicitation or contract award is in violation of the provisions of the Mississippi Procurement Code or Regulations. After consultation with the Attorney General, the Ethics Commission may determine that a solicitation or award violates Ethics in Public Contracting of the Mississippi Procurement Regulation or the regulations promulgated thereunder. Any such determination shall be made in writing after an opportunity to be heard is given, and such determination is subject to appropriate appeal. [The Procurement Review Board may determine that a solicitation or contract award is in violation of the provisions of the Mississippi Procurement Regulations.]

6.201.01.2 Finding of Bad Faith or Fraud

Bad faith or fraud shall not be assumed. Specific findings showing reckless disregard of clearly applicable laws or regulations must support a finding of bad faith. A finding of fraud must be supported by specific findings showing knowing, willful acts in disregard of such laws or regulations.

6.202 Remedies Prior to an Award

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

- (a) canceled; or
- (b) revised to comply with the law.

6.202.01 Cancelling or Revising Solicitation or Proposed Award to Comply with Law

A finding by the Chief Procurement Officer, after consultation with the Attorney General, that the solicitation or proposed award is in violation of law will constitute a compelling reason to cancel or revise a solicitation or proposed award. Such cancellation shall be made in accordance with Regulation 3.112 (Cancellation of Invitations for Bids or Requests for Proposals).

6.203 Remedies After an Award

If after an award, it is determined that the solicitation or award is in violation of the law then the contract will be canceled in accordance with Section 3.112, Cancellation of Invitations for Bids or Requests for Proposals.

6.203.01 Termination

Contracts based on awards or solicitations that were in violation of law shall be terminated at no cost to the State, except as may be approved by the Public Procurement Review Board (PPRB) in compliance with State law.

6.203.02 Effect of Declaring a Contract Null and Void

In all cases where a contract is voided, the State shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract and the State is entitled to recover the greater of:

- (a) the difference between payments made under the contract and the contractor's actual costs up until the contract was voided; or
- (b) the difference between payments under the contract and the value to the State of the supplies, services, or construction if obtained under the contract.

The State may in addition claim damages under any applicable legal theory.

6.204 Protest of Solicitations or Awards**(1) Scope**

This section applies to:

- (a) a protest of a solicitation or award of a contract addressed to the Procurement Review Board by an aggrieved actual or prospective bidder or offeror, or a contractor; and
- (b) an appeal addressed to the Board of a decision under Section 6.101.03.

(2) Time Limitations on Filing a Protest or an Appeal

- (a) For a protest under Subsection (1)(a) of this section, the aggrieved person shall file a protest with the Board within 7 days after the aggrieved person knew or should have known of the facts and circumstances upon which the protest is based.
- (b) For an appeal under Subsection (1) (b) of this section, the aggrieved person shall file an appeal within seven days of receipt of a decision under Section 6.101(3).

(3) Decision

On any direct protest under Subsection (1)(a) of this section or appeal under Subsection (1)(b) of this section, the Board shall promptly decide whether the solicitation or award was in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.

(4) Standard of Review for Factual Issues

A determination of an issue of fact by the Board under Subsection (3) of this section shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

6.205 Suspension or Debarment Procedures**(1) Scope**

This section applies to a review by the Procurement Review Board of a decision under Section 6.102, Authority to Debar or Suspend.

(2) Time Limitations on Filing an Appeal

The aggrieved person shall file its appeal with the Board within 7 days of the receipt of a decision under Section 6.102(3), Authority to Debar or Suspend, Decision.

(3) Decision

The Board shall promptly decide whether, or the extent to which, the debarment or suspension was in accordance with the Constitution, statutes, regulations, and the best interests of the State, and was fair. The proceeding shall be de novo. Any prior

determinations by administrative officials shall not be final or conclusive.

(4) **Standard of Review for Factual Issues**

A determination of an issue of fact by the Board under Subsection (3) of this section shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

6.206 Contract and Breach of Contract Controversies

(1) **Scope**

This section applies to a review by the Procurement Review Board of a decision under Section 6.103, Authority to Resolve Contract and Breach of Contract Controversies.

(2) **Time Limitations on Filing an Appeal**

The aggrieved contractor shall file its appeal with the Board within 7 days of the receipt of a decision under Section 6.103(3), Authority to Resolve Contract and Breach of Contract Controversies, Decision.

(3) **Decision**

The Board shall promptly decide the contract or breach of contract controversy. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.

(4) **Standard of Review for Factual Issues**

A determination of an issue of fact by the Board under Subsection (3) of this section shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

6.207 No Finality to a Decision on an Issue of Law

No determination by the Procurement Review Board on an issue of law shall be final or conclusive.

6.208 Appeal and Review of Procurement Appeals Board Decisions

(1) **Appeal**

Any person receiving an adverse decision, the State, or both may appeal from a decision by the Procurement Review Board to the designated court or courts of the State.

(2) **Authorization of Appeal by the State**

No such appeal shall be made by the State unless recommended by the Chief Procurement Officer or the head of the purchasing agency involved and approved by the Attorney General.

6.209 Discontinuance of Contractor's Appeal

After notice of an appeal to the Procurement Review Board has been filed with the Chief Procurement Officer or the head of a purchasing agency, a contractor may not discontinue such appeal without prejudice, except as authorized by the Board.

6.210 Debriefings

In accordance with Chapter 3, Section 3.107.18 of the Manual, the Agency Procurement Officer is authorized to provide debriefings that furnish the basis of the source selection decision and contract award. Debriefings may only be conducted when utilizing the competitive sealed proposal process as authorized in Chapter 3, Section 3.107.

- (1) At the written request of any offeror who has submitted a proposal, debriefings may be given orally, in writing, or by any other method acceptable to the Agency Procurement Officer. Such debriefings may be given at any time on or after the eighth (8th) day after the agency has awarded the contract. In no case may an offeror request a debriefing more than thirty (30) days after the agency has awarded the contract.
- (2) An offeror's written request for a debriefing should include a list of any questions an offeror may have in order to assist the Agency Procurement Officer or agency staff in preparing for the debriefing.
- (3) A post-award debriefing may include:
 - (a) The agency's evaluation of significant weaknesses or deficiencies in the proposal, if applicable;
 - (b) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror;
 - (c) The overall ranking of all proposals, when any such ranking was developed during the source selection;
 - (d) A summary of the rationale for award;
 - (e) Reasonable responses to relevant questions about whether source selection procedures contained in the Request for Proposals and applicable law were followed.
- (4) Post-award debriefings should not include point-by-point comparisons of the debriefed proposal with those of other offerors.
- (5) Any debriefing should not reveal any information prohibited from disclosure by law, or exempt from release under the Mississippi Public Records Act of 1983, including trade secrets, or privileged or confidential commercial or manufacturing information. Agencies should consult their Public Information Officer or agency legal representative for guidance in complying with the Act prior to conducting debriefings.
- (6) Debriefings are non-adversarial business meetings. Accordingly, offerors may bring legal representation to any oral debriefing, although it is not necessary. If, however, any offeror has legal representation present during an oral debriefing, the agency must also

have its legal representative in attendance. Questioning of agency staff by offerors' legal representative(s) is not permitted.

- (7) A summary of any debriefing should be included in the contract file.