

5.0 DISPUTES & REMEDIES

- 5.1 Types of Disputes.** The Director of Procurement and Contracting is authorized to settle and resolve any questions regarding:
- Any protest concerning the Solicitation or Award of a Contract, including State of Colorado form Contracts provided by the Office of the State Architect; and,
 - Any controversy arising between Mines and a Contractor by virtue of a Contract between them, including, without limitation, controversies based on breach of Contract, mistake, misrepresentation or any other cause for Contract modification or rescission.
- 5.2 Costs of Filing.** All costs associated with filing and prosecuting a protest or Contract dispute shall be borne by the Protestor/Contractor.

5.3 Protests other than Contract Disputes.

5.3.1 Filing a Protest

- A. Protestors may file a protest on any phase of a Solicitation or Award including, but not limited to, Specifications, Award, or disclosure of information marked as confidential in a Solicitation response. Protests shall be submitted in writing within seven (7) working days after such aggrieved person knows or should have known of the facts giving rise thereto.
- B. The written protest must include, at a minimum:
- The name and address of the Protestor;
 - Appropriate identification of the Procurement by Solicitation number;
 - A statement of the reasons for the protest; and
 - Any available exhibits, evidence or documents substantiating the protest
- C. The protest will be addressed to the Director of Procurement and Contracting and sent to the Office of Procurement and Contracting.

5.3.2 Requested Information

Any additional information regarding the protest should be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to comply expeditiously with any request for information by the Director of Procurement and Contracting, the protest may be resolved without such information.

5.3.3 Decision

The Director of Procurement and Contracting shall render a written decision regarding the protest within seven (7) working days after the protest is received. The decision shall be based on and limited to a review of the issues raised by the Protestor and shall set forth each factor taken

into account in reaching the decision. The Director of Procurement and Contracting shall furnish a copy of the decision to the Protestor in writing.

5.3.4 Stay of Procurement

There shall be a stay of Procurement until the decision of the Director of Procurement and Contracting is rendered, unless the Director of Procurement and Contracting determines that execution of a Contract without delay is necessary to protect substantial Mines interests.

5.3.5 Actions in Court

If a Protestor has filed a complaint in court which complaint is also the subject of a protest filed with the Director of Procurement and Contracting, the Director of Procurement and Contracting will not review the protest.

5.3.6 Entitlement to Costs

When the Director of Procurement and Contracting substantiates a protest and the Protestor should have been Awarded the Contract under the Solicitation but, due to a defect in Mines' Solicitation or process, was not, the Protestor shall be entitled to the reasonable costs incurred in connection with responding to the Solicitation. No other costs shall be permitted and reasonable costs shall not include attorney fees.

5.4 Contract Disputes.

5.4.1 The terms and conditions of Mines Contracts establish procedures and remedies to resolve Contract and breach of Contract controversies between Mines and a Contractor. It is Mines' policy to try to resolve all controversies by mutual agreement through informal discussions without litigation. As used in these Procedures, the word "controversy" is meant to be broad and all encompassing, including the full spectrum of disagreements from pricing of routine Contract changes to claims of breach of Contract.

5.4.2 If a Contractor has filed a complaint in court which complaint is also the subject of a protest filed with the Director of Procurement and Contracting, the Director of Procurement and Contracting will not review the protest.

5.4.3 When a controversy cannot be resolved by mutual agreement, the Director of Procurement and Contracting shall review the matter within twenty (20) working days after receiving a written request by the Contractor for a final decision and shall issue a written decision.

5.4.4 The Director of Procurement and Contracting shall furnish a written copy of the decision to the Contractor. The decision shall include:

- A. A description of the controversy;
- B. A reference to the pertinent Contract provision(s);

- C. A statement of the factual areas of agreement and disagreement; and
- D. The supporting rationale for the decision.

6.0 SUSPENSION & DEBARMENT

6.1 Suspension. After meeting with the affected Mines department(s) and, where practicable, the vendor who is to be suspended, the Director of Procurement and Contracting may issue a written determination to suspend a vendor from doing business with Mines pending an investigation to determine whether cause exists for debarment. The suspension shall not exceed three (3) months unless a criminal indictment has been issued for an offense, which would be cause for debarment. In such cases, the suspension may remain in effect until after the trial of the suspended vendor.

6.1.1 A written notice of the suspension, including a copy of the determination, shall be sent to the suspended vendor. The notice must:

- A. State that the suspension will be for the period necessary to complete an investigation into possible debarment; and
- B. Inform the suspended vendor that any person(s) representing the suspended vendor during the suspension period may conduct no business with Mines and that any Solicitation responses received from the suspended vendor during the suspension period shall not be considered.

6.1.2 The suspension period will be effective upon issuance of the notice of suspension

6.2 Debarment. A vendor may be debarred for any of the following reasons:

- Conviction of a criminal offense in relation to obtaining or attempting to obtain a Mines Contract or in the performance of such Contract;
- Conviction under State of Colorado or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property;
- Conviction under State of Colorado or federal antitrust statutes arising out of the submission of Bids or Proposals;
- Willful material failure to perform in accordance with the terms of one or more Contracts following notice of such failure, or a history of material failure to perform, or of materially unsatisfactory performance of one or more Contracts;
- The vendor is currently under debarment by any other governmental entity which is based upon a settlement agreement or a final administrative or judicial determination issued by a federal, state or local governmental entity; and/or
- Violation of the provisions of Section 7-108-401 C.R.S., "General Standards of Conduct for Directors and Officers."