

Effective 3/29/2014

Superseded 5/12/2015

63G-6a-1603 Protest officer responsibilities and authority -- Proceedings on protest -- Effect of decision.

- (1) After a protest is filed, the protest officer shall determine whether the protest is timely filed and complies fully with the requirements of Section 63G-6a-1602.
- (2) If the protest officer determines that the protest is not timely filed or that the protest does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest.
- (3) If the protest officer determines that the protest is timely filed and complies fully with Section 63G-6a-1602, the protest officer shall:
 - (a) dismiss the protest if the protest officer determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;
 - (b) uphold the protest without holding a hearing if the protest officer determines that the undisputed facts of the protest indicate that the protest should be upheld; or
 - (c) hold a hearing on the protest if there is a genuine issue of material fact that needs to be resolved in order to determine whether the protest should be upheld.
- (4)
 - (a) If a hearing is held on a protest, the protest officer may:
 - (i) subpoena witnesses and compel their attendance at the protest hearing;
 - (ii) subpoena documents for production at the protest hearing;
 - (iii) obtain additional factual information; and
 - (iv) obtain testimony from experts, the person filing the protest, representatives of the procurement unit, or others to assist the protest officer to make a decision on the protest.
 - (b) The Rules of Evidence do not apply to a protest hearing.
 - (c) The applicable rulemaking authority shall make rules relating to intervention in a protest, including designating:
 - (i) who may intervene; and
 - (ii) the time and manner of intervention.
 - (d) A protest officer shall:
 - (i) record each hearing held on a protest under this section;
 - (ii) regardless of whether a hearing on a protest is held under this section, preserve all records and other evidence relied upon in reaching the protest officer's written decision until the decision, and any appeal of the decision, becomes final; and
 - (iii) submit to the procurement policy board chair a copy of the protest officer's written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving:
 - (A) notice that an appeal of the protest officer's decision has been filed under Section 63G-6a-1702; or
 - (B) a request from the chair of the procurement policy board.
 - (e) A protest officer's holding a hearing, considering a protest, or issuing a written decision under this section does not affect a person's right to later question or challenge the protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.
- (5)
 - (a) The deliberations of a protest officer may be held in private.
 - (b) If the protest officer is a public body, as defined in Section 52-4-103, the protest officer shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (6)

- (a) A protest officer, or the protest officer's designee, shall promptly issue a written decision regarding any protest, unless the protest is settled by mutual agreement.
 - (b) The decision shall:
 - (i) state the reasons for the action taken;
 - (ii) inform the protestor of the right to judicial or administrative review as provided in this chapter; and
 - (iii) indicate the amount of the security deposit or bond required under Section 63G-6a-1703.
 - (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or otherwise immediately furnish a copy of the decision to the protestor.
- (7) A decision described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section 63G-6a-1903.
- (8)
- (a) A decision described in Subsection (6)(a) that is issued in relation to a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1702.
 - (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1802.
- (9) If the protest officer does not issue the written decision regarding a protest or a contract controversy within 30 calendar days after the day on which a written request for a final decision is filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protestor, prospective contractor, or contractor may proceed as if an adverse decision had been received.
- (10) A determination under this section by the protest officer regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.