

**Effective 3/28/2016**

**63G-6a-1703 Requirement to pay a security deposit or post a bond -- Exceptions -- Amount -- Forfeiture of security deposit or bond.**

- (1) A person who files a notice of appeal under Section 63G-6a-1702 shall, before the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a notice of appeal, pay a security deposit or post a bond with the office of the protest officer.
- (2) The amount of a security deposit or bond required under Subsection (1) is:
  - (a) for an appeal relating to an invitation for bids or request for proposals and except as provided in Subsection (2)(b)(ii):
    - (i) \$20,000, if the total contract value is under \$500,000;
    - (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;
    - (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
    - (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
    - (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
    - (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than \$16,000,000;
    - (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than \$32,000,000;
    - (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than \$64,000,000;
    - (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than \$128,000,000;
    - (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than \$256,000,000;
    - (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than \$512,000,000; and
    - (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or
  - (b) \$20,000, for an appeal:
    - (i) relating to any type of procurement process other than an invitation for bids or request for proposals;
    - (ii) relating to an invitation for bids or request for proposals, if the estimated total contract value cannot be determined; or
    - (iii) of a debarment or suspension.
- (3)
  - (a) For an appeal relating to an invitation for bids, the estimated total contract value shall be based on:
    - (i) the lowest responsible and responsive bid amount for the entire term of the contract, excluding any renewal period, if the bid opening has occurred;
    - (ii) 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
    - (iii) if the contract is being rebid, the historical usage and amount spent on the contract over the life of the contract.
  - (b) For an appeal relating to a request for proposals, the estimated total contract value shall be based on:
    - (i) 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;
    - (ii) 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
    - (iii) 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.
- (4) The protest officer shall:
  - (a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;

- (b) as it relates to a security deposit:
  - (i) deposit the security deposit into an interest-bearing account; and
  - (ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the general fund of the procurement unit under Subsection (5); and
- (c) as it relates to a bond:
  - (i) retain the bond until the protest and any appeal of the protest decision becomes final; and
  - (ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the general fund of the procurement unit under Subsection (5).
- (5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the general fund of the procurement unit if:
  - (a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and
  - (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

Amended by Chapter 355, 2016 General Session