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A. Definitions

In this Section, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidary relationship between persons.
2. "Award" means the earliest of (a) issuance of a notice to proceed, (b) execution of a contract, or (c) authorization to contract provided by the Board or its designee for such purpose.
3. "Debarment" means an action taken by the president, or designee under Subsection D below to prohibit a person or entity from participating in procurements with the Board or any university or both. The period of debarment shall be for not less than one year nor more than five years.
4. "Designee" means a duly authorized representative of a university president or, where appropriate, of the Executive Director of the Board.
5. "Filed" means delivery to the procurement officer, to the university president, or to the Executive Director of the Board, whichever is applicable. A time/date stamp affixed to a document by the office of the procurement officer, the university president or the Executive Director of the Board, whichever is applicable, shall be determinative of the time of delivery for purposes of filing.
6. "Governing instruments" means those legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter and bylaws.
7. "Interested party" means an actual or prospective bidder or offeror whose direct economic interest may be affected by the issuance of

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a solicitation, the award of a contract, or by the failure to award a contract. Whether an actual prospective bidder or offeror has a direct economic interest will depend upon the circumstances in each case. At a minimum, the interest must be substantial and must be tangibly affected by the administrative action or proposed action concerned in the case. For instance, a bidder who is fourth in line for award does not have a sufficient economic interest to protest the proposed award of a contract to the low bidder.

8. "President" or "university president" means the president of a university or, where appropriate, the Executive Director of the Board.
9. "Receipt" or "Received" means delivery to the last known address of the addressee to whom the document is sent. A document, if undeliverable, is deemed to have been received by the addressee if properly sent to the addressee's last known address. A document that is placed in the mail and that is properly addressed and not returned is presumed to have been received within five days of mailing unless the addressee can show otherwise.
10. "Suspension" means an action taken by a president temporarily disqualifying a person from participating in procurements with the Board and/or any university. The period of suspension shall not exceed one year.

B. Bid Protests

1. Delegation of Authority
 - a. Initial review and resolution of bid protests shall be conducted by the procurement officer or designee for the university.
 - b. Final decision on appeal of bid protests shall be made by the university president or a designee other than the procurement officer.
2. Filing of Protests

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- a. Any interested party may protest a solicitation issued by a university, or the proposed award or the award of a contract with a university by filing a notice of protest.
- b. Time for Filing Protest
 - (1) Protests concerning improprieties in a solicitation
 - (a) In procurements inviting bids, protests based upon alleged errors, irregularities or improprieties in a solicitation that are apparent before the bid opening shall be filed before the bid opening.
 - (b) In procurements requesting proposals, protests based upon alleged errors, irregularities or improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals. Protests concerning improprieties that do not exist in the initial solicitation, but that are subsequently incorporated into the solicitation, shall be filed by the next closing date for receipt of proposals following the incorporation.
 - (2) In cases other than those covered in Subdivision (1) above, protests shall be filed no later than ten days after a contract is awarded in connection with the procurement action.
 - (3) Failure to timely protest shall be deemed a waiver of all rights under this Code.

c. Content of Notice of Protest

The notice of protest shall be in writing and shall include the following information:

- (1) The name, address and telephone number of the protestor;

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- (2) The signature of the protestor or its representative;
 - (3) Identification of the university and the solicitation or contract number;
 - (4) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - (5) The form of relief requested.
- d. Upon receipt of the protest, the procurement officer shall within five working days give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties.
- e. Stay of Procurements During the Protest
- If a protest is filed before the award of a contract, no award shall be made until the protest has been resolved, unless the president or a designee other than the procurement officer makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the university or the Board.
- f. Protected Information
- (1) Materials submitted by a protestor shall not be withheld from any interested party except to the extent that the withholding of information is required by law or is permitted by law and specifically requested by the protestor.
 - (2) If the protestor believes the protest contains material that should be withheld, a statement advising the procurement officer of this fact shall accompany the notice of protest and the information shall be so identified wherever it appears. The president or a designee shall review the statement and information and shall determine whether the information shall be

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withheld. Information shall be withheld if its nonrelease is necessary to protect the interests of the university, the Board or the State. The president's determination shall be in writing and state the reasons for the determination.

3. Decision by the Procurement Officer

- a. The university procurement officer shall issue a written decision within twenty days of receipt of the notice of protest.
- b. The decision shall contain an explanation of the basis of the decision. The procurement officer shall furnish a copy of the decision to the protestor by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- c. The time limit for a decision may be extended by the procurement officer for a reasonable time not to exceed thirty days. The procurement officer shall notify the protestor in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- d. If the procurement officer fails to issue a decision within the time limits set forth above, the protestor may proceed as if the procurement officer had issued an adverse decision.
- e. Remedies
 - (1) If the university procurement officer sustains the protest in whole or in part and determines that a solicitation, proposed contract award, or contract award does not comply with this Code or procedures promulgated thereunder, the procurement officer shall implement an appropriate remedy.
 - (2) In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or the proposed procurement, including, but not limited to,

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the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, cost to the government, the urgency of the procurement, and the impact of relief on the university's mission.

- (3) An appropriate remedy may include one or more of the following:
- (a) Decline to exercise an option to renew under the contract;
 - (b) Terminate the contract;
 - (c) Reissue the solicitation;
 - (d) Issue a new solicitation;
 - (e) Award a contract consistent with this Code and the procedures promulgated thereunder;
 - (f) Reject all bids or proposals without further action; or
 - (g) Such other relief as is determined necessary to ensure compliance with this Code or procedures promulgated thereunder.

4. Appeal to the President

- a. When an appeal is sought to be taken, a notice of appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the university president within five days from the date the decision is received.
- b. Final decision on an appeal to the president shall be made by the president or a designee other than the procurement officer. Any hearing on appeal shall be conducted by the official with authority to make a final decision, or by a hearing

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officer appointed by the official with authority to make a final decision.

- c. The notice of appeal shall contain:
 - (1) The information set forth in Paragraph 2.c of Subsection B, including the identification of protected information in the manner set forth in Paragraph 2.f of Subsection B.
 - (2) A copy of the decision of the procurement officer; and
 - (3) The basis for the appeal.
- d. The official or hearing officer conducting the appeal shall immediately give written notice of the pending appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Any party so notified shall, upon request, be furnished with a copy of the notice of appeal filed in the matter.
- e. Stay of Procurement during Appeal

If an appeal is filed before an award of contract and the award of the contract was stayed by the procurement officer pursuant to Paragraph 2.e of Subsection B, the filing of an appeal shall automatically continue the stay unless the official or hearing officer conducting the appeal makes a written determination that the award of the contract without delay is necessary to protect the substantial interest of the university, the Board, or the State.
- f. Dismissal before Hearing

The official or hearing officer conducting the appeal shall dismiss, upon a written determination, an appeal if:

 - (1) The appeal does not state a valid basis for protest; or
 - (2) The appeal is untimely.

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g. Hearings on appeals of bid protest decisions shall be conducted pursuant to the provisions of Subsection F of this Section 3-809, except that a protestor may waive his right to an evidentiary hearing in favor of a review by the hearing officer based solely on the documentation available to the procurement officer.

h. Remedies

If the appeal is sustained in whole or in part, and a determination is made that a solicitation, proposed award, or award does not comply with this Code or procedures promulgated thereunder, an appropriate remedy shall be implemented pursuant to the provisions of Paragraph 3.e of Subsection B.

C. Contract Claims and Controversies

1. Delegation of Authority

- a. Initial review and efforts to resolve or settle a contract claim or controversy shall be conducted by the university procurement officer, except that any settlement of a claim or controversy in excess of \$25,000 shall require the prior written approval of the president or a designee other than the procurement officer.
- b. Final decision on an appeal to the president shall be made by the president or a designee other than the procurement officer. Any hearing on appeal shall be conducted by the official with authority to make a final decision, or by a hearing officer appointed by the official with authority to make a final decision.

2. Initiation of Claim or Controversy

- a. A contract controversy may be brought to the attention of the contractor by the procurement officer or may be brought to the attention of the procurement officer by the contractor.

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- b. A contract claim made by a contractor shall be filed in writing with the procurement officer within the time period set forth in the procurement contract, but in no event later than one year after the date on which the last of the labor was performed or material was supplied by the contractor.
3. The parties to any contract claim or controversy may agree to have the work or performance under the contract proceed under a reservation of rights so as not to waive the right of any party in the matter.
4. Procurement Officer's Decision
 - a. Where a contract controversy is submitted by the procurement officer to the contractor and is not resolved by mutual agreement, the procurement officer shall promptly refer the matter to the president for a hearing pursuant to Paragraph 6 below.
 - b. If a controversy or claim submitted or filed by a contractor cannot be resolved by mutual agreement, the procurement officer shall issue a final decision. Upon a written request by the contractor for a final decision, the procurement officer shall promptly issue that decision no more than 120 days after receipt of the request. Before issuing a final decision, the procurement officer shall review the facts pertinent to the controversy or claim and secure any necessary assistance from legal, fiscal, and other advisors.
 - (1) Where the claim or controversy exceeds \$50,000, the time limit for a final decision may be extended for a reasonable time not to exceed thirty days. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
 - (2) The time limit for a decision involving a claim or controversy amounting to \$50,000 or less may not be extended.

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(3) If the procurement officer fails to issue a decision within 120 days after receipt of a request to do so or within any permitted extension of that time period, the contractor may proceed as if the procurement officer had issued an adverse decision.

c. The procurement officer shall 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. The decision shall include:

- (1) A description of the controversy;
- (2) A reference to the pertinent contract provisions;
- (3) A statement of the factual areas of agreement or disagreement;
- (4) A statement of the procurement officer's decision, with supporting rationale;
- (5) A paragraph substantially as follows:

This is the final decision of the procurement officer. This decision may be appealed to the president of the university. If you decide to make such an appeal, you must mail or otherwise furnish written notice of appeal to the president within five days from the date you receive this decision.

5. Appeal to the President

- a. A written notice of appeal from a final decision of a procurement officer on a claim or controversy must be filed with the university president within five days of the receipt of the decision.
- b. Final decision on an appeal to the president shall be made by the president or a designee other than the procurement officer. Any hearing on appeal shall be conducted by the official with authority to make a final decision, or by a hearing

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officer appointed by the official with authority to make a final decision.

6. Hearings on appeals of decisions related to contract claims or controversies shall be conducted in accordance with the provisions of Subsection F of this Section 3-809.

D. Debarment or Suspension

1. Delegation of Authority

- a. A university officer designated by the president has authority pursuant to Paragraph 2 of this Subsection D to propose action to suspend or debar a person from procurement activity with any university and the Board.
- b. A final decision to debar or suspend a person or an affected affiliate from participating in procurements shall be made by the president or designee.

2. Initiation of Debarment or Suspension Action

Upon receipt of information concerning a possible cause for debarment, the designated university officer shall investigate or have investigated the possible cause. If the officer has a reasonable basis to believe that a cause for debarment exists, that officer may propose debarment or suspension proceedings by filing a proposal for debarment or suspension with the office designated by the president.

3. Notice

- a. Except as provided in Subparagraph c. below, if suspension or debarment is proposed, the designated university officer shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, of the proposed suspension or debarment and that the person may request a hearing which shall be scheduled in accordance with this Section 3-809.

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- b. Except as provided in Subparagraph c. below, if suspension or debarment of an affiliate is also proposed in the notice under subparagraph a. above, the affiliate shall have a right to appear in any hearing on the proposed suspension or debarment to show mitigating circumstances. The affiliate shall in writing advise the designated university officer within thirty days of receipt of the notice of its intention to appear under Subparagraph b. Failure to provide written notice of appearance within this period shall be a waiver of the right to appear.
- c. The designated university officer, upon notice, may suspend or debar a person or an affiliate under suspension or debarment by the State or any federal procurement agency who has had a prior opportunity for hearing in connection with the suspension or debarment by the State or any federal procurement agency. The period of such suspension or debarment from procurement with the Board and any university or both shall run concurrently with the suspension or debarment by the State or federal procurement agency.

4. Grounds for Suspension or Debarment

- a. A person may be suspended or debarred where reasonable grounds are found to exist.
- b. Grounds for suspension or debarment include 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 any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or

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any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state 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 serious as to justify debarment action, such as either of the following:
 - (a) Knowingly fails without good cause to perform in accordance with the specifications or within the time limit provided in the contract.
 - (b) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except 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.
- (5) Any other cause deemed to affect responsibility as a state contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity.

5. Imputed Knowledge

- a. Improper conduct, as set forth in Paragraph 4 above, may be imputed to an affiliate for purposes of suspension or debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
- b. Improper conduct, as set forth in Paragraph 4 above, of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the

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person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

6. Reinstatement

- a. A request for reinstatement shall not be considered until at least one year has run on the debarment. At that time, the designated university officer may reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.
- b. Any debarred person may request reinstatement by submitting a petition to the designated university officer supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- c. The designated university officer may require a hearing on the request for reinstatement.
- d. The decision on reinstatement shall be in writing and specify the factors on which it is based.
- e. Decisions on reinstatement requests are not subject to appeal.

7. Limited Participation

The Board may allow a debarred person to participate in contracts with the Board on a limited basis during the debarment period upon a written determination that participation is advantageous to the Board, the university or the State. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

8. Hearing Procedure

Hearings required or permitted under this Subsection D shall be conducted pursuant to the provisions of Subsection F below.

E. Hearing Officer or Official Conducting Hearing

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1. Any hearing required or permitted under this Section 3-809 may be conducted by a hearing officer appointed for that purpose or by the official with authority to make a final decision in the matter.
2. A decision by a hearing officer or by the official with authority to make a final decision shall be based on the evidence presented at hearing and shall include proposed findings of fact and conclusions of law. However, a decision by a hearing officer shall only constitute a recommendation to be submitted to the official with authority to make a final decision.
3. A hearing officer or other official conducting any hearing under this Code shall have such powers and duties as are set forth in this subsection and in Subsection F below.

F. General Hearing Procedures

1. All hearings required or permitted under these rules shall be conducted as contested cases pursuant to these rules and the provisions of Article 1, Chapter 6, Title 41, Arizona Revised Statutes.
2. Proper and adequate written notice of the time, date and place of hearings shall be made by the hearing officer.
3. All hearings shall be recorded manually or by a recording device. A transcribed record of the hearing shall be made available at cost to the requesting party.
4. The hearings shall be conducted in an informal manner without formal rules of evidence or procedure.
5. The hearing officer may:
 - a. Hold pre-hearing conferences to settle, simplify, or identify the issues in the proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 - b. Require parties to state their positions concerning the various issues in the proceedings;

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- c. Require parties to produce for examination those relevant witnesses and documents under their control;
 - d. Rule on motions, and other procedural items pending before such officer;
 - e. Regulate the course of the hearing and conduct of participants;
 - f. Establish time limits for submission of motions or memoranda;
 - g. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
 - (1) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence.
 - (2) Excluding all testimony of an unresponsive or evasive witness; and
 - (3) Expelling any person from further participation in the hearing.
 - h. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
 - i. Administer oaths or affirmations.
6. Unless the hearing officer has been authorized to make a final decision, in accordance with Section 3-809(C), the recommendation of the hearing officer shall be transmitted to the official with authority to make a final decision. The official may affirm, modify or reject the recommendation and order further appropriate proceedings. The recommendation when affirmed or modified, signed by the official with authority to make a final

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decision and filed shall constitute the decision on the matter, which shall be final.

7. The decision shall be sent to all parties by certified mail, return receipt requested. The decision shall state that a party adversely affected may within ten days of mailing request a rehearing.

G. Rehearing or Review of Final Decision

1. Any party who is aggrieved by a final decision of the official with authority to make a final decision may file with the official, not later than ten days after mailing of the decision, a written motion for rehearing or review of the decision specifying the particular grounds. Any supporting affidavit shall accompany the motion.
2. Interested parties shall be notified of the request. A response may be filed by an interested party within five days after receipt of the notice. The official with authority to make a final decision may require the filing of written briefs and may provide for oral argument.
3. A rehearing of the decision may be granted for any of the following causes materially affecting the moving party's rights:
 - a. Irregularity in the proceedings or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 - b. Misconduct of the official with authority to make a final decision, the hearing officer, or any party;
 - c. Accident or surprise that could not have been prevented by ordinary prudence;
 - d. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 - e. Excessive or insufficient penalties;

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- f. Error in the admission or rejection of evidence or other error of law occurring;
 - g. A showing that the decision is not justified by the evidence or is contrary to law.
4. A decision concerning a request for rehearing shall be in writing and state the basis for the decision. A decision granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
 5. The official with authority to make a final decision, within the time for filing a motion for rehearing under this Subsection G, may on his own initiative order a rehearing or review of the decision for any reason for which he might have granted a rehearing on motion of a party.

H. Master List

1. The Board shall maintain a master list of debarments, suspensions and voluntary exclusions under this Section 3-809. The master list shall show the following:
 - a. The names of those persons whom the universities or the Executive Director have debarred or suspended under this Section 3-809.
 - b. The period of debarment or suspension, including the expiration date;
 - c. The basis for the debarment or suspension; and
 - d. A separate section listing persons voluntarily excluded from participation in university contracts.

I. Miscellaneous

1. Notwithstanding any law to the contrary, including the provisions of Title 12, Chapter 7, Article 2, this Section 3-809 and the procedures provided by this Section shall be the exclusive procedures for

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asserting a claim against the Board or a university arising in relation to any procurement conducted under this Code.

2. Any final decision of an official with authority to make a final decision in a matter referred to in this Section 3-809 is subject to judicial review pursuant to Title 12, Chapter 7, Article 6 by any party to the proceedings before the official. Any complaint shall be served upon the Arizona Board of Regents by service upon the Executive Director of the Board within the time prescribed pursuant to A.R.S. §12-904.
3. The applicable procedures set forth in this Section 3-809, including the procedure on rehearing set forth in Subsection G, is a jurisdictional prerequisite to obtaining a final decision for which judicial review may be sought. The failure to complete any applicable procedure shall constitute a failure to exhaust administrative remedies.