

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 44. AUDITOR GENERAL

(Authority: A.R.S. § 41-1279.01 et seq.)

ARTICLE 1. SUSPENSION AND DEBARMENT OF CONTRACTORS PROVIDING SCHOOL DISTRICT AUDIT SERVICES; DISAPPROVAL OF CONTRACTS

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ARTICLE 1. SUSPENSION AND DEBARMENT OF CONTRACTORS PROVIDING SCHOOL DISTRICT AUDIT SERVICES; DISAPPROVAL OF CONTRACTS**R4-44-101. Definitions**

The following definitions shall apply throughout these rules except as otherwise required by the context or except as otherwise defined by statute:

1. "Affiliate" means a person controlling, controlled by, or under common control with another person.
2. "Auditor General" means the person designated pursuant to A.R.S. § 41-1279.01(A) to act as Auditor General.
3. "Contractor" means the person or entity who contracts with a school district to provide audit services.
4. "Debarment" means a decision to preclude or prohibit a person from offering a bid or proposal for school district audit services for a period not to exceed three years.
5. "Decision" means a written determination by the Auditor General which is signed by the Auditor General.
6. "Person" means a corporation, company, partnership, firm, association, or society, as well as a natural person.
7. "Suspension" means a decision to preclude or prohibit a person from offering a bid or proposal for school district audit services for a period not to exceed one year.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-102. Parties

In any hearing, the parties include all persons named in the notice of hearing including the Auditor General, a contractor, and all persons properly admitted as intervenors. All parties are bound by the decisions of the Auditor General relating to the hearing.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-103. Hearing Officer

The hearing officer appointed by the Auditor General may make findings of fact and conclusions of law and recommend that the Auditor General make certain orders after the hearing officer has heard all of the evidence. In addition, the hearing officer may make

all determinations on procedural matters in the course of the hearing or rehearing.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-104. Cause for Suspension or Debarment

The causes for suspension or debarment include the following:

1. Conviction of any person or affiliate of such 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 affiliate of such 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 any other offense indicating a lack of business integrity or business honesty.
3. Conviction or civil judgment finding a violation by any person or affiliate of any such person under state or federal antitrust statutes.
4. Violations of material contract provisions including but not limited to failure to perform or negligent performance of any term or standard of one or more school district audit services contracts. The failure to perform caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment.
5. Any other cause deemed to affect the ability to perform as a contractor, including suspension or debarment of such person or any affiliate of such person by another state agency or political subdivision.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-105. Notice of Hearing and Response

- A. If the Auditor General believes that cause exists to suspend or debar a contractor, the Auditor General shall notify the contractor in writing of such basis or cause and set the date, time, and place for hearing.
- B. The contractor shall file a response to the assertions contained in the notice of hearing. The response shall be in writing and shall be filed with the Auditor General within 20 days after service of the notice upon the contractor. If the notice is amended any time subsequent to service of the notice, the contractor may be required to answer the amended assertions within a reasonable time.
- C. A response filed under this rule shall briefly state the position or defenses of the responding contractor and shall specifically admit or deny each of the assertions contained in the notice. If the responding contractor is without or is unable to reasonably obtain knowledge or information sufficient to form a belief as to the truth of an assertion, the contractor shall so state and this shall have the effect of a denial. Any assertion not denied shall be deemed to be admitted.
- D. If a contractor fails to file a response within the time provided, the assertions contained in the notice of hearing shall be deemed to be admitted.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-106. Service

- A.** All notices and documents required to be served by the Auditor General and all documents filed by any contractor may be served by mail or by delivery in person. Service of any document shall be deemed complete when a true copy is deposited in the United States mail with first class postage prepaid, addressed to addressee of record, or upon personal delivery to the contractor. Service upon an attorney or agent who has appeared on behalf of the Auditor General or on behalf of a contractor shall constitute service upon the Auditor General or upon the contractor on whose behalf the particular attorney or agent has appeared.
- B.** Copies of all papers or documents filed shall be served on the hearing officer, if any, and upon the contractor. The Auditor General may require a copy of any document to be served upon any other persons or entities. Proof of service may be made by affidavit of the person making service, or by written acceptance of the service by the person upon whom the document is served. An original and one legible copy of all documents shall be filed with the Auditor General.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-107. Form of Documents; Motions

- A.** All papers filed with the Auditor General in any matter pertaining to the hearing shall be typewritten or legibly written on paper no larger than 8 1/2 by 11 inches, shall contain the name and address of the party or other correspondent, shall designate the title and docket number, if any, shall state the name and address of each person or entity served with a copy, shall be properly captioned, and shall be signed by the individual or entity filing it or by at least one attorney who represents the entity or individual. The signature certifies that the signer has read the paper, that to the best of the signer's knowledge, information, and belief, there is good ground to support its contents and that it is not interposed for delay.
- B.** A motion for an order shall be made in writing stating the grounds with particularity and setting forth the relief sought except that a motion made during a hearing need not be in writing. All motions made prior to hearing shall be served upon all parties who shall have 10 days after service of the motion to respond except in the case of unforeseeable circumstances or emergency, in which case the motion shall be heard as soon as practicable after the motion has been served on the other parties. If any party to the hearing fails to timely respond or any party fails to appear at oral argument of the motion, if any, the Auditor General or the hearing officer may dispose of the motion summarily. Any party may request oral argument on any motion or the Auditor General or the hearing officer may require oral argument.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-108. Continuances; Extensions of Time

- A.** A continuance or postponement of the time for filing any response required by these rules or of any hearing may be granted, in the interests of justice, by the Auditor General or the hearing officer upon application in writing or upon stipulation between the Auditor General and all other parties.
- B.** Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper and the notice or paper is served by mail, five days shall be added to the prescribed period.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-109. Stipulations

Parties to any proceeding may by written stipulation agree upon any matter involved in the proceeding. If approved by the Auditor General or the hearing officer, the stipulation shall be binding upon all parties to the proceeding or as between the parties stipulating. Notwithstanding the foregoing, the Auditor General or the hearing officer may require presentation of evidence for proof of stipulated facts.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-110. Prehearing Statements

- A.** Not less than two days before hearing, each party shall ensure that the Auditor General or the designated hearing officer has received a prehearing statement which shall be so designated and which shall set forth with specificity the following:
1. A list of all exhibits and witnesses to be used at the hearing; and
 2. A list of the issues of law and fact which the party submitting the prehearing statement believes to be material.
- B.** No other exhibits or witnesses shall be used during the hearing other than those listed and exchanged, except for good cause shown or for impeachment purposes.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-111. Hearing Procedures

- A.** A hearing for suspension or debarment is a contested case as defined by A.R.S. § 41-1001(3), and the provisions of A.R.S. Title 41, Chapter 6, Article 6 (A.R.S. § 41-1061 et seq.) apply to those cases.
- B.** The hearing officer may:
1. Hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 2. Require parties to state their positions concerning the various issues in the proceeding;
 3. Require parties to produce for examination those relevant witnesses and documents under their control;
 4. Rule on motions and other procedural items on matters pending before such officer;
 5. Regulate the course of the hearing and conduct of participants;
 6. Establish time limits for submission of motions or memoranda;
 7. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
 - a. Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - b. Excluding all testimony of an unresponsive or evasive witness; and
 - c. Expelling a person from further participation in the hearing;
 9. 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
 10. Administer oaths or affirmations.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

Auditor General

R4-44-112. Recording; Transcript

All hearings before the Auditor General or a hearing officer shall be mechanically recorded or stenographically reported. Nothing contained herein shall be construed as prohibiting or limiting any person from mechanically recording the proceedings or having them stenographically reported. However, the official record of the proceeding shall be that which is designated by the Auditor General. The cost of the reporter, if any, and the transcript shall be paid by the party making the request unless assessment of the cost is waived by the Auditor General.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-113. Decision

- A.** The decision shall:
1. Be in writing;
 2. State separately the findings of fact and conclusions of law and the order of the Auditor General and the effective period of the action; and
 3. Be served on the parties.
- B.** A decision shall be effective on the date signed by the Auditor General.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-114. Period of Suspension or Debarment

- A.** The period of time for a suspension shall not exceed one year from the date of the decision.
- B.** The period of time for a debarment shall not exceed three years from the date of the decision.
- C.** If suspension or debarment is based solely upon suspension or debarment by another governmental agency, the period of suspension or debarment may run concurrently with the period established by that other suspending or debaring agency.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-115. Rehearing

- A.** Any party aggrieved by a decision rendered by the Auditor General may file with the Auditor General or the hearing officer, not later than 15 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor.
- B.** A motion to alter or amend a decision or order shall be filed not later than 15 days after service of the decision.
- C.** A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Auditor General.
- D.** A response, if any, shall be filed and served within ten days after service of such motion.
- E.** The Auditor General or the hearing officer may require the filing of written memoranda upon the issues raised in the motion and may provide for oral argument.
- F.** Any argument not raised in the request or in the response is waived.
- G.** Rehearing of the decision may be granted for any of the reasons materially affecting the moving party's rights:
1. Irregularity in the proceedings before the Auditor General or hearing officer or an abuse of discretion by the Auditor General or hearing officer, whereby the moving party was deprived of a fair hearing;

2. Misconduct of the Auditor General, staff or hearing officer, or the prevailing parties;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing; or
5. A showing that the decision was not justified by the evidence or is contrary to law.

H. An order granting rehearing shall specify with particularity the grounds on which the rehearing is granted and the rehearing shall cover only those matters so specified.

I. The Auditor General or the hearing officer, within the time for filing a request for rehearing under this rule, may order a rehearing of the decision for any reason for which a rehearing might have been granted on application of a party.

J. The Auditor General or the hearing officer may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth above.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-116. Reinstatement

- A.** The Auditor General may, at any time after a final decision on a suspension or debarment, reinstate a contractor or rescind the decision upon a determination that the cause upon which the suspension or debarment is based no longer exists or has been substantially mitigated.
- B.** Any suspended or debarred person may request reinstatement by submitting a petition to the Auditor General supported by documentary evidence showing that the cause for suspension or debarment no longer exists or has been substantially mitigated.
- C.** The Auditor General may require a hearing on the request for reinstatement.
- D.** The decision on reinstatement shall be in writing, be made within 30 days after the request is filed or, if there is a hearing, 30 days after hearing, and specify the factors on which it is based.
- E.** Decisions on reinstatement requests are not subject to judicial appeal.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).

R4-44-117. Disapproval of Contracts

- A.** The Auditor General may disapprove a contract for the same causes provided for in R4-44-104.
- B.** The Auditor General may disapprove a contract if the contract does not contain a provision to the following effect: "The audit shall be conducted in accordance with generally accepted auditing standards, *Government Auditing Standards*, issued by the Comptroller General of the United States, and Office of Management and Budget Circular A-128, *Audits of State and Local Governments*."
- C.** A decision to disapprove a contract shall be in writing and shall state the cause or reasons for the disapproval. The disapproval shall be sent to the school district.

Historical Note

Adopted effective July 23, 1993 (Supp. 93-3).