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Phoenix Symphony suspends schedule

The music is in danger of stopping for the Symphony as it faces a financial crunch.

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Suns owners fund downtown YMCA

Downtown Phoenix's YMCA closed in September. There's a $60M plan to rebuild it.

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THE LIST

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IT TAKES A VILLAGE

San Tan Valley is Pinal County's newest and largest municipality. Mayor Daren Schnepf is ready to help build it from the ground up.

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POWER

FUTURE OF THE GRID UNDER THE MICROSCOPE

We recently sat down with Arizona energy leaders for a free-flowing conversation about the state of Arizona's power grid — and what's next.

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Arizona's Public Bidding & Procurement Process: How Business Owners Can Pursue or Challenge a Public Contract Award

The Legal PULSE



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Government entities spend billions of dollars annually purchasing goods and services from private businesses. These lucrative government contracts are secured through a public purchasing process known as "public bidding" or "procurement."

Nearly every government entity has its own procurement opportunity notification system, process, timeline, rules, and regulations. Whether your industry is health care, transportation, food and beverage, technology and software, or professional services, it can be intimidating and cumbersome to navigate the complex and specialized process of public bidding and procurement.

THE BASICS OF AN RFP

The public bidding and procurement process starts before you ever submit a response to an entity's request for proposal (RFP). RFPs can range from two pages long to dozens of pages. Your response is often double that.

It's critical that you and your legal advisor review the RFP in its entirety and develop a checklist of all data required.

For service providers, this often includes qualifications and examples of relevant experience for each expert being submitted, rates, references, and proof of insurance. For goods, this can include technical and product specifications, delivery logistics, quality control assurances, per unit or bulk pricing, and standards and certifications.

Your response must be submitted on time via the manner indicated (i.e. online portal, email, post mail, or in person) and must fully comply with each requirement of the RFP. Governmental entities operate under a strict "late is late" rule and will not accept late submissions. Often, incomplete submissions won't make it past the initial review phase.

It's also important to note that, typically, responses to RFPs are not confidential and are subject to public records requests.

CHALLENGING A CONTRACT AWARD

You may have spent precious resources responding to a solicitation in detail, only to learn that your company was not selected for award. There are certain circumstances in which you can challenge the government's decision.

Each government entity has its own rules for resolving procurement protests, ranging from a simple letter to the procurement office to a formal protest and full-scale administrative hearing, which can include appeals through the courts.

Protest procedures are typically set forth in the solicitation and/or applicable procurement statutes, regulations, or ordinances. You must scrupulously follow these procedures, including rules prohibiting communication with procurement officials, or risk disqualification from contract award.

Protest periods almost always move quickly – meaning you may have only days to challenge an award.

A SUCCESSFUL PROTEST

Protesting can be an uphill battle because procurement officials generally have wide discretion in awarding contracts, responding to protests, and determining the proper remedy in response to a valid protest. But even "losing" protests can yield positive outcomes.

First, even before filing a protest, you can submit a public records request or a request for debriefing with the government entity to learn how it reached its award decision. This can give you a better understanding of the evaluation process and your proposal's strengths and weaknesses, as well as information to assist you in preparing future proposals. Of course, public records requests and debriefings can also provide you with more detailed information to strengthen your protest.

Second, you may be able to improve the procurement process for your own future procurement opportunities. For example, if an agency has historically disposed of scoring sheets post-evaluation, a protester may be able to convince the agency to keep such documents to aid in future reviews of the decision-making process. Indeed, government entities often see protests as opportunities to improve upon existing practices that can lead to a more fair process in the future and a better outcome for taxpayers.

Critically, protesters must also be sensitive to their desired customers, and tactfully challenge the procurement process without alienating people.

LEGAL COUNSEL

Every government entity has its own procedures, but generally a protest need not be signed by an attorney, unless it requires filing an action in court. But given the short time frames for challenging an award, often 7-10 days, it is wise to have experienced legal counsel ready to assist in any challenge even before a contract award is announced.

IN CLOSING

Navigating complex and specialized public bidding and procurement laws doesn't need to be stressful. Following all steps and meeting each requirement in the agency's RFP will help ensure a successful submission. Experienced legal counsel can help your business identify and pursue these revenue-generating contracting opportunities, minimize risk, eliminate pitfalls, resolve disputes, and defend a public contract award.

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