

PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP
PROCUREMENT PROTEST POLICY AND PROCEDURES ("POLICY")
2019-2021 RENOVATION

1. Computation of time under this Policy.

In computing any period of time prescribed or allowed by this Policy the day of the act or event from which the designated period of time begins to run will not be included. Unless noted otherwise, intermediate Saturdays, Sundays and Operator holidays will not be included in the computation. The last day of the period so computed will be included unless it is a Saturday, Sunday or a holiday observed by the City of Phoenix, in which event, the period runs until 5:00 p.m. of the next day which is not a Saturday, Sunday or City holiday.

2. Definitions.

A. *Operator's General Manager* means the General Manager of the Talking Stick Resort Arena, or his or her authorized designee.

B. *Operator's Executive Vice President* means Operator's Chief Financial Officer or authorized designee.

C. *Interested party (parties)* means those persons submitting proposals to the Operator in response to the solicitation; for a protest, limited to the protesting offeror and recommended offeror.

D. *Operator* means Phoenix Arena Development Limited Partnership, an Arizona limited partnership

E. *Proposer* means any person, party or firm who intends to submit or who submits a solicitation response to the Operator for a Renovation Contract.

E. *Protest:*

1. Means with regard to a solicitation protest:

a. A formal complaint made by a party concerning the contents of the solicitation.

2. Means with regards to an award recommendation:

a. A formal complaint made by an interested party who has a substantial chance of being awarded the contract and will be harmed by the recommended award recommendation;

b. May also mean a formal complaint about the solicitation by an aggrieved party concerning the proposed solicitation award;

F. *Renovation Contract* means a contract for the design, engineering, construction management, or construction of a renovation to the Talking Resort Arena

G. *Solicitation* means a request for qualifications, invitation to bidders, a request for proposals, a request for quotation or any other invitation or request issued by the Operator to invite a person, party or firm to submit an offer, statement, response, bid or other proposal for a Renovation Contract.

H. *Solicitation response* means a bid, proposal, statement of qualifications or other offer to contract submitted to the Operator in response to a solicitation for a Renovation Contract.

3 Protests generally.

A. The protesting proposer will file the protest in writing with the *Operator's General Manager* who will determine if the protest is timely and valid.

B. A proposer or interested party will follow the procedures set forth in this Policy to protest a solicitation, the short list of qualified firms, the final list of qualified firms, a determination of non-responsiveness, or the proposed award of a Renovation Contract.

C. A proposer or interested party will include the following information in each protest:

1. The name, address, and telephone number of the proposer;

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2. The signature of the proposer or the proposer's representative;
 3. Identification of the specific solicitation or contract number;
 4. A detailed statement of all legal and factual grounds of the protest, including copies of relevant documents; and
 5. The form of relief requested.
- D. The *Operator's General Manager* will reject all protests not filed strictly in accordance with the limits in this Policy
- E. The *Operator's General Manager* has the discretion to appoint a hearing officer to review the protest in accordance with this Policy.

4 Protest of solicitation.

- A. With respect to a protest of a solicitation, the *Operator's General Manager* is authorized to deny a protest, or to amend or withdraw any solicitation.
- B. If the protest is based on an alleged mistake, impropriety, or defect that is apparent before the deadline for submission of a solicitation response, the proposer will file the protest within seven days after the proposer knew or should have known of the alleged mistake, impropriety or defect; but in no case later than seven days prior to the deadline for submission of the solicitation response.
- C. All solicitation protesters must submit a timely offer regardless of a solicitation protest being submitted. Only upon official notice from the *Operator's General Manager* in the form of a solicitation addendum will a solicitation deadline be postponed, at the *Operator's General Manager*'s discretion.

5 Protest of Determination or Contract Award

- A. With respect to a protest of an award recommendation, the *Operator's General Manager* is authorized to deny, sustain, or sustain in part any protest; protest hearings are optional.
- B. If the protest is based on an alleged mistake, impropriety, or defect that is apparent after the deadline for submission of the solicitation response, the proposer will file the protest within three days after the earliest of the following events:
1. The proposer knew of or should have known of the basis for the protest; or
 2. Notice of intent to award a contract; or
 3. Notice of a short list determination; or
 4. Notice of a final list determination; or
 5. Notice of determination of non-responsiveness.
- C. The Operator will notice the solicitation determinations and decision as provided in subsections (B)(1) through (4) of this section on its procurement webpage. Notice related to subsection (B)(5) of this section determinations will be made directly to the proposer.

5 Hearing procedures.

- A. If a hearing is held, an opportunity will be afforded all interested parties to respond and present evidence and argument on all issues presented in the protest.
- B. The burden of proof will remain with the proposer lodging the protest.
- C. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings will be grounds for reversing any administrative decision

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or order providing the evidence supporting such decision or order is substantial, reliable, and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every interested party to such proceedings will have the right to be represented by counsel, to submit evidence in open hearing and will have the right of cross examination. Unless otherwise provided by law, hearings may be held at any place determined by the Operator's General Manager.

6 Protest or withdrawal recommendation.

- A. Within seven days, or if extended by the Operator's General Manager for good cause, within a reasonable time of completion of the hearing, if a hearing is held, the hearing officer will submit written findings and recommendations to the Operator's General Manager.
- B. The Operator's General Manager will make the final recommendation regarding the protest or withdrawal to the Operator's Executive Vice President in a timely manner.
- C. The Owner's Executive Vice President will make the final determination.

7. Solicitation Transparency.

Except only as provided in this Section 7, commencing on the date and time a solicitation is published, potential or actual proposers (including their representative) are prohibited from discussing matters associated with the solicitation with any of the Operator's staff other than the Operator Project Representative, or with any staff or official of the City of Phoenix ("City") until the resulting contract(s) are awarded or all offers or responses are rejected and the solicitation is cancelled without any announcement of the procurement officer of the Operator's intent to reissue the same or a similar solicitation. The only exceptions from this "no contact" policy are communications with the entire election panel during a formal finalist interview; and formal verbal presentation or written communications made by the proposer to the Operator's General Manger, hearing officer, or Operator's Chief Financial Officer when prosecuting a protest; provided and on condition that each such verbal presentation must be made only when in the presence of, and a copy of each such written communication must be given simultaneously to, the Operator's Project Representative. *Ex parte* communications to the Operator's General Manger and Chief Financial Officer are strictly prohibited. As long as the RFQ solicitation is not discussed, Proposers may continue to conduct and discuss business with the Operator's staff or the City's staff that is unrelated to this RFQ solicitation.