

Douglas A. Ducey
Governor



Kathy Peckardt
Interim Director

ARIZONA DEPARTMENT OF ADMINISTRATION

STATE PROCUREMENT OFFICE

100 NORTH FIFTEENTH AVENUE • SUITE 201
PHOENIX, ARIZONA 85007

(602) 542-5511 (main) (602) 542-5508 (fax)
<http://spo.az.gov>

MEMORANDUM

TO: Agency Chief Procurement Officers

FROM: Barbara Corella, State Procurement Administrator

DATE: January 7, 2015

SUBJECT: Changes to Rules in the Arizona Procurement Code

Rule changes were unanimously approved by the Governor's Regulatory Review Council at their public meeting on December 2, 2014 and were posted to the Administrative Register by the Secretary of State's office on December 19, 2014. The final rulemaking becomes effective February 2, 2015.

A new Arizona Procurement Code will be posted on the SPO website with an effective date of February 2015.

Solicitations (formal and informal) that have been issued or are in evaluation before February 2, 2015 will not require an amendment to accommodate any applicable changes to the Rules.

Solicitations that have not been issued to the public must incorporate any applicable changes as a result of changes to the Rules.

Key changes:

- Definitions:
 - Competitive range definition removed
 - Best and Final Offer definition added
 - Brand Name or **Equal** changed to Brand Name or **Equivalent**
- Pre-Offer Conferences timeline changed from "7 Days" to "reasonably sufficient time". [Note: This does not immediately mean a shorter amount of time—depending on the solicitation, more than seven days is necessary to be "reasonable".]

- Removal of several written determinations including the determination to solicit a Request for Proposal or multi-step bidding.
- Offer Revisions, Best and Final Offers and negotiations: **IF** you conduct negotiations, you **MUST** have a best and final offering.
- Procurement file shall be available within **THREE** days of award. [Note: Since contract are awarded electronically, all documents except for the signed Offer and Acceptance Form should be uploaded into ProcureAZ **PRIOR** to contract award in the system.]
- Small dollar purchases increased from \$5,000 to \$10,000.
- For purchases between \$10,000 and \$100,000, **MUST** solicit from small business only and then may solicit from others—no longer solicit from both at the same time, unless meets criteria to do so.
- New requirements if only one offer is received.
- New dollar level limitations to contract change orders and amendments.
- Change in multi-term contract requests.
- Change in contract negotiations regarding modifications to **Uniform** Terms and Conditions.
- Introduces Informal Settlement Conference during an appeal
- Cooperative Contract changes to allow for piggyback purchases. [Note: SPO will be issuing technical bulletin or standard procedure on when and how to use this option.]

Please do not hesitate to contact the SPO office if you have any questions regarding changes to the Arizona Procurement Code.

Attachment: Notice of Final Rulemaking

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 7. DEPARTMENT OF ADMINISTRATION STATE PROCUREMENT OFFICE

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3566.) The Governor's Office authorized the notices to go through the rulemaking process on August 29, 2013.

[R14-204]

PREAMBLE

<u>1. Article, Part, or Sections Affected (as applicable)</u>	<u>Rulemaking Action</u>
R2-7-101	Amend
R2-7-B301	Amend
R2-7-B302	Amend
R2-7-B306	Amend
R2-7-B312	Amend
R2-7-B314	Amend
R2-7-B315	Amend
R2-7-B316	Amend
R2-7-C301	Amend
R2-7-C302	Amend
R2-7-C306	Amend
R2-7-C311	Amend
R2-7-C314	Amend
R2-7-C315	Amend
R2-7-C316	Amend
R2-7-C317	Amend
R2-7-C318	Amend
R2-7-D301	Amend
R2-7-D302	Amend
R2-7-D303	Repeal
R2-7-D303	Renumber
R2-7-D303	Amend
R2-7-D304	Renumber
R2-7-D304	Amend
R2-7-D304	Amend
R2-7-D305	Renumber
R2-7-E301	Amend
R2-7-F301	Amend
R2-7-F302	Amend
R2-7-F303	Amend
R2-7-F304	Amend
R2-7-F305	Amend
R2-7-F306	Amend
R2-7-F307	Amend
R2-7-F308	Amend
R2-7-F309	Amend
R2-7-F310	Amend
R2-7-403	Amend
Article 5	Amend
R2-7-503	Amend
R2-7-604	Amend
R2-7-605	Amend

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R2-7-606	Amend
R2-7-607	Amend
R2-7-A909	Amend
R2-7-A910	Re-number
R2-7-A910	New Section
R2-7-A911	Re-number
R2-7-A911	Amend
R2-7-A912	Re-number
R2-7-1003	Re-number
R2-7-1003	New Section
R2-7-1004	Re-number
R2-7-1004	Amend
R2-7-1005	Re-number
R2-7-1005	Amend
R2-7-1006	Re-number
R2-7-1007	Re-number
R2-7-1007	Amend
R2-7-1008	Re-number
R2-7-1008	Amend
R2-7-1009	Re-number
R2-7-1010	Re-number
R2-7-1010	Amend

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statutes: A.R.S. § 41-2511(A)

Implementing statutes: A.R.S. §§ 41-2511, 41-2501 through 41-2504, 41-2512 through 41-2516, 41-2531 through 41-2544, 41-2546 through 41-2552, and 41-2554 through 41-2559, 41-2561 through 41-2568, 41-2571 through 41-2574 and 41-2576 through 41-2579, 41-2580, 41-2585 and 41-2586, 41-2591, 41-2601 through 41-2607, 41-2611 through 41-2617, 41-2631 through 41-2637, 41-2661 and 41-2662, and 41-2671 through 41-2673

3. The effective date of the rules:

February 2, 2015

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 19 A.A.R. 3283, October 18, 2013

Notice of Proposed Rulemaking: 20 A.A.R. 4, January 3, 2014

Notice of Oral Proceeding: 20 A.A.R. 686, March 14, 2014

Notice of Supplemental Rulemaking: 20 A.A.R. 2425, September 5, 2014

5. The agency’s contact person who can answer questions about the rulemaking:

Name: Barbara M. Corella, State Procurement Administrator
Address: Department of Administration – State Procurement Office
100 N. 15th Ave., Suite 201
Phoenix, AZ 85007
Telephone: (602) 542-9136
Fax: (602) 542-5508
E-mail: Barbara.Corella@azdoa.gov
or
Name: Rob Smook, ADOA Rules Administrator
Address: Department of Administration – Fleet Management Office
1501 W. Madison St.
Phoenix, AZ 85007
Telephone: (602) 542-6161
Fax: (602) 542-3125
E-mail: Robert.Smook@azdoa.gov

6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

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The purpose of this rulemaking is to address recent statutory changes made by HB2599 (Laws 2013, Ch. 190). For example, in R2-7-D301, the small dollar quote process has been modified to increase goals set forth for small business purchases to support A.R.S. § 41-2535. R2-7-1003 further defines the actions available for cooperative purchasing based on the changes in A.R.S. § 41-2632.

Other changes have been made to improve processes and increase efficiency and transparency in public procurement and bring them into conformance with current practice. For example, in R2-7-101, the definition for “Best and Final Offer” was added to meet current terminology and “Competitive Range” was removed to align best practices for solicitation evaluations and susceptibility for contract awards. Another example is in R2-7-B301, which includes changing terminology to the current practice from “brand name or equal” to “brand name or equivalent.”

To increase transparency, the State engages in eProcurement. Solicitations are issued and awarded electronically (as allowed in R2-7-208); references to public bid openings have been removed from R2-7-B306 and R2-7-C306 because the bid opening information is available online.

Several determinations have been removed to improve processes and increase efficiency—multistep sealed bidding (R2-7-B316), competitive sealed proposals (R2-7-C301), and procurement of construction using alternate project delivery method (R2-7-503). Current practice is to allow procurement officers to choose among the variety of solicitation options available in the Arizona Procurement Code to meet the needs of the agency. These determinations are an administrative action that offers no value in the procurement process.

R2-7-A910 introduces an option for an informal settlement conference during a procurement appeal process. Informal settlements allow the director, or director’s designee, to hold an informal conference with interested parties to settlement negotiations prior to an administrative or judicial hearing. The benefit of this rule will allow for actions that are more efficient during the appeal process.

The subject matter of these rules is the procurement and management of all materials, services and construction for the state of Arizona. The statutes and the rules are based on the American Bar Association’s 2000 Model Procurement Code for State and Local Governments and are commonly referred to as the “Arizona Procurement Code,” as well as best practices in public procurement.

An exemption from the rulemaking moratorium contained in Executive Order 2012-03 was granted in an e-mail from Steven Killian, policy advisor to Governor Brewer, dated August 29, 2013.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

1. Identification of the Proposed Rulemaking:

The proposed rulemaking governs the procurement and management of all materials, services, and construction for the State of Arizona. The rules are based on the American Bar Association’s Model Procurement Code and known as the “Arizona Procurement Code.” The Department received an exception from the rulemaking moratorium from the Governor’s Office on August 29, 2013.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:

The parties affected by this rulemaking include: state government officials and managers, state government procurement employees, suppliers including small businesses and non-profit organizations that provide services to state government, associations that represent various business groups, attorneys, local government units including cities, counties, and school districts.

3. Cost-benefit analysis:

The benefits of this rulemaking are greater efficiency in public procurement, reduced operating cost of public procurement, increased opportunities for small businesses, improved understanding and ease of use of rules for government agencies and suppliers and more open access to procurement opportunities and information.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking, including the number of new full-time employees necessary to implement and enforce the proposed rules.

There will be no new costs to implementing agencies as this revision will be primarily administrative in nature. The benefits of this rulemaking are greater efficiency in public procurement, reduced operating cost of public procurement, increased opportunities for small businesses, improved understanding and ease of use of rules for government agencies and suppliers, and more open access to procurement opportunities and information. The

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new changes would be communicated through the State Procurement Office's website in addition to email to agency procurement officials. Probable benefits would be updated procurement practices for state government in addition to further clarity in the rules that govern agency procurement practices. No new employees will be necessary to implement and enforce the rules.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

The benefits of this rulemaking for political subdivisions include greater efficiency in using statewide contracts, improved understanding and ease of use of rules and more open access to procurement opportunities and information. There are no new costs for political subdivisions as a result of this rulemaking.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.

The impact on businesses should be positive. Businesses will benefit from more open access to contracting opportunities with the state. In addition, the proposed changes in this rulemaking should provide a better understanding of the rules and their function to businesses than the rules currently in place.

4. Probable impact on private and public employment in businesses, agencies, and political subdivisions of the state directly affected by the proposed rulemaking.

None.

5. Probable impact of the rulemaking on small business.

a. Identification of the small business subject to the rulemaking.

Small businesses subject to the rulemaking, including suppliers and minority and women-owned businesses, should be positive. Small businesses will benefit from more open access to contracting opportunities with the state. In addition, the proposed changes in this rulemaking should provide more direct access to small dollar purchasing opportunities.

b. Administrative and other costs required for compliance with the rulemaking.

None

c. A description of methods that may be used to reduce the impact on small businesses and reasons for the agency's decision to use or not use each method.

Not applicable

6. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The long-term effect to private persons and consumers should be a reduction in costs resulting from greater efficiency in the procurement program and the ability to negotiate lower costs for the state.

7. Probable Effect on State Revenues:

There should be no immediate measurable impact on state revenues or expenses. The long term effect should be a reduction in costs resulting from greater efficiency in the procurement program and the ability to negotiate lower costs for the state.

8. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Department's first choice was the \$10,000 limit and thus, no other amounts were considered or discussed. All of the discussion between the Department and stakeholders focused on the reasonableness for raising the amount from \$5,000 to \$10,000. The rationale for doing this was to balance having a dollar amount that allows for efficiency while still getting small dollar competition.

9. Description of any data on which the rule is based.

Not applicable

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Changes between the Notice of Proposed Rulemaking and the Notice of Supplemental Proposed Rulemaking (issued on September 5, 2014) were in response to written and public comments and explained in detail in item 11.

Changes between the Notice of Supplemental Proposed Rulemaking and this final notice are as follows:

- R2-7-101(37) was modified from the Notice of Proposed Rulemaking to its current definition after numerous written and oral comments were presented from stakeholders to allow further discussion; the only modification is to reflect the title change in R2-7-C315;
- R2-7-B312 was changed to remove the reference to A.R.S. § 41-2553, which was repealed on September 13, 2013;
- R2-7-A909 through R2-7-A912 were modified to allow the director to identify a designee in appeal rulings as

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- well as further clarification on the participants in an informal settlement conference; and
- R2-7-1003 was modified in response to a stakeholder's written comments.
- R2-7-1010 was modified to define appeal procedures in set-aside application disputes.

No written comments were received after publication of the Notice of Supplemental Proposed Rulemaking.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Department was contacted by two law firms with written comments regarding the rule package prior to the proposed Close of Record on February 3, 2014. Written comments were focused on proposed rule changes in three sections: R2-7-101, R2-7-A910, and R2-7-1003, as follows:

- Brett Johnson and Joshua Grabel (Snell & Wilmer) submitted written comments concerning the definition of "procurement file". The department's response was to remove the proposed changes to the definition to allow for further stakeholder discussion. Messrs Johnson and Grabel also expressed concern regarding R2-7-A910, informal settlement conference, in particular, the unilateral and mandatory nature of the conference as well as the director's participation in the conference and ultimate settlement of the appeal. The department has modified the informal settlement conference to address their concerns.
- Gregory Harris (Lewis Roca Rothgerber) submitted written comments regarding R2-7-1003, cooperative purchasing. Mr. Harris supports the adoption of the rule to facilitate the use of cooperative purchasing by state agencies but proposes a clear link between any new cooperative contracts and existing state contracts. Mr. Harris also expressed concern that the state procurement administrator maintains the responsibility in selecting the use of cooperative contracts available to an agency. Mr. Harris further proposed suggested language to address his points as well as other grammatical changes. The department modified the proposed language to include the grammatical changes. The department did not accept the proposal that the state procurement administrator maintain the authority in review and selection of cooperative contracts. The rule delegates the authority to the agency chief procurement officer. Mr. Harris also submitted written comments regarding the definition of "procurement file" (R2-7-101). As stated above, the department will continue stakeholder conversations on the rule.

An oral proceeding on proposed rulemaking was scheduled and held on April 22, 2014. Fifteen individuals attended.

Gregory Harris (Lewis Roca Rothgerber), Ben Mitsuda (Snell & Wilmer), and JoAnn Cipiti (Blue Cross Blue Shield AZ) testified in regard to R2-7-101. Discussion focused around clarity in definition and timeframes of procurement file, particularly as it relates to protests; requests that Department provide more versus less documents in the procurement file, and consideration of personal notes to be added to the definition to provide valuable information to non-awarded bidders. The department explained that the State conducts proposal evaluations by consensus by an evaluation committee and a collective evaluation report is used in making a recommendation for award, as required in R2-7-C316—no individual notes are used in the evaluation. The department responded to exercise caution in what is included in the procurement file due to the snapshot nature of some correspondences or documents and the vulnerability of misinterpretation due to lack of context. The Department also responded that bidder debriefings have always been available though few vendors take advantage of them. [Note: As a result of written comments and the oral proceedings, all but two proposed changes to the definition of "procurement file" have been rescinded in the Notice of Final Rulemaking and the department will further stakeholder discussions.]

Ben Mitsuda (Snell & Wilmer) testified in opposition to R2-7-A910. Mitsuda stated that the proposed rule changes in R2-7-A910 are in conflict with A.R.S. § 41-1092.06, waive the conflict of interest provision, and that the proposed rule change would lengthen the protest and appeal process further. The department has modified the rule to address concerns of conflict of interest. Regarding the length of the protest and appeal process, A.R.S. § 41-2611 requires the director to refer the appeal to a hearing if a decision is not issued within the prescribed time frame.

Julie Tribbett (Mohave Educational Services Cooperative (Mohave)) testified in support of R2-7-1003 and stated that Mohave supports piggybacking with proper rulemaking, including clarifying the links between rules in different subsections. Mohave believes that there should be discretion regarding piggybacking within agencies, and that rules should be established to make clear when piggybacking runs parallel to other procurements, needs to be made clear when piggybacking cannot be used, and when it can be used when a statewide strategic contract already exists. The department responded that these issues would be managed through a technical bulletin or standard procedure.

Gregory Harris (Lewis Roca Rothgerber) testified in regard to R2-7-1003 asking the department to ensure that cooperative users understand their rights to usage and the purpose of cooperatives. Mr. Harris also requested that the department articulate what factors might allow a cooperative purchase when a statewide contract exists. The department responded that these issues would be managed through a technical bulletin or standard procedure.

After releasing the Notice of Supplemental Proposed Rulemaking, a second oral proceeding was scheduled for October 7, 2014. Three individuals attended but no oral comments were presented. All individuals at the second oral proceeding attended the first oral proceeding. No one provided testimony.

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12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require issuance of a regulatory permit or license.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There is no corresponding federal law that is applicable. The rules are being promulgated under state law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

None

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 7. DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT OFFICE

ARTICLE 1. GENERAL PROVISIONS

Section

R2-7-101. Definitions

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

PART B. COMPETITIVE SEALED BIDDING

Section

R2-7-B301. Solicitation
R2-7-B302. Pre-offer Conference
R2-7-B306. Receipt, Opening, and Recording of Offers
R2-7-B312. Bid Evaluation
R2-7-B314. Contract Award
R2-7-B315. Mistakes Discovered After Award
R2-7-B316. Multistep Sealed Bidding

PART C. COMPETITIVE SEALED PROPOSALS

Section

R2-7-C301. Solicitation
R2-7-C302. Pre-offer Conferences
R2-7-C306. Receipt, Opening, and Recording of Offers
R2-7-C311. Determination of Not Susceptible for Award
R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers
R2-7-C315. ~~Final Proposal Revisions~~ Offer Revisions and Best and Final Offers
R2-7-C316. Evaluation of Offers
R2-7-C317. Contract Award
R2-7-C318. Mistakes Discovered After Award

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PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

Section

- R2-7-D301. Applicability
- R2-7-D302. Solicitation – Request for Quotation
- ~~R2-7-D303. Request for Quotation Issuance Repealed~~
- ~~R2-7-D304. R2-7-D303. Contract Award~~
- ~~R2-7-D305. R2-7-D304. Purchases of \$5,000 \$10,000 and Less~~

PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

Section

- R2-7-E301. Sole Source Procurements

PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS, LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS

Section

- R2-7-F301. Statement of Qualifications
- R2-7-F302. Solicitation
- R2-7-F303. Solicitation Amendment
- R2-7-F304. Cancellation of Solicitation
- R2-7-F305. Receipt, Opening, and Recording of Offers
- R2-7-F306. Timely and Late Modifications or Withdrawals of Offer
- R2-7-F307. Late Offers
- R2-7-F308. Negotiations with Offers
- R2-7-F309. Contract Award
- R2-7-F310. Mistakes Discovered After Award

ARTICLE 4. SPECIFICATIONS

Section

- R2-7-403. Determination for Use of Brand Name Type Specifications

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND ~~SPECIFIED~~ SPECIFIC PROFESSIONAL SERVICES

Section

- R2-7-503. Procurement of Construction Using Alternate Project Delivery Method

ARTICLE 6. CONTRACT CLAUSES

Section

- R2-7-604. Contract Change Orders and Amendments
- R2-7-605. Multi-term Contracts
- R2-7-606. Terms and Conditions
- R2-7-607. Mandatory Statewide Contracts

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS

Section

- R2-7-A909. Remedies by the Director
- R2-7-A910. Informal Settlement Conference
- ~~R2-7-A910. R2-7-A911. Dismissal Before Hearing~~
- ~~R2-7-A911. R2-7-A912. Hearing~~

ARTICLE 10. INTERGOVERNMENTAL PROCUREMENT

Section

~~R2-7-1003.~~ Purchasing from a Cooperative Contract

~~R2-7-1003-R2-7-1004.~~ Establishment of a Committee as Required by A.R.S. § 41-2636

~~R2-7-1004-R2-7-1005.~~ Certification as Non-Profit Agency for Disabled Individuals

~~R2-7-1005-R2-7-1006.~~ Application for Approval as Required by A.R.S. § 41-2636 to Become a Certified Non-Profit Agency for Disabled Individuals

~~R2-7-1006-R2-7-1007.~~ Approval of Specific Materials or Services for Set-aside Use

~~R2-7-1007-R2-7-1008.~~ Contract Awards Directed by the Committee

~~R2-7-1008-R2-7-1009.~~ Contract Awards Initiated by an Agency Chief Procurement Officer or Local Public Procurement Unit

~~R2-7-1009-R2-7-1010.~~ Set-aside Application Dispute Process

ARTICLE 1. GENERAL PROVISIONS

R2-7-101. Definitions

In this Chapter, 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. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "Agency chief procurement officer" means the procurement officer within a state governmental unit, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other person within a state governmental unit who does not have this written delegation of authority.
3. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. "Alternate project delivery methods" means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. "Arizona Procurement Code" means A.R.S. Title 41, Chapter 23 and this Chapter 7.
6. "Arizona state contract" means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. "Award" means a determination by the state that it is entering into a contract with one or more offerors.
8. ~~"Bid" means an offer in response to solicitation.~~
8. "Best and Final Offer" means a revision to an offer submitted after negotiations are completed that contain the offeror's most favorable terms for price, service, and products to be delivered.
9. "Bid" means an offer in response to solicitation.
- ~~9-10.~~ "Bidder" means "offeror" as defined in R2-7-101(36)(34).
- ~~10-11.~~ "Brand name or equal equivalent specification" means a written description that uses one or more manufacturers' product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
- ~~11-12.~~ "Brand name specification" means a written description limited to a list of one or more items by manufacturers' product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
- ~~12-13.~~ "Clergy" includes the same persons described in A.R.S. §~~32-3273(3)~~ 32-3271(A)(3).
13. ~~"Competitive range" is a range determined by the procurement officer on the basis of the criteria stated in the solicitation and an initial review of the proposals submitted. Those proposals that are susceptible for award after the initial review of all original proposals in accordance with the evaluation criteria and a comparison and ranking of original proposals shall be in the competitive range. Those proposals that have no reasonable chance for award when compared on a relative basis with more highly ranked proposals will not be in the competitive range. Proposals to be considered within the competitive range must, at a minimum, demonstrate the following:~~
 - a. ~~Affirmative compliance with mandatory requirements designated in the solicitation.~~
 - b. ~~An ability to deliver goods or services on terms advantageous to the state sufficient to be entitled to continue in the competition.~~

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- e. ~~That the proposal is technically acceptable as submitted.~~
14. "Component" means a part of a manufactured product.
15. "Contract amendment" means a written modification of a contract under A.R.S. § 41-2503(8) or a unilateral exercise of a right contained in the contract.
16. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.
17. "Cost-plus-a-percentage-of-cost contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
18. "Day" means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. "Debarment" means an action taken by the director under R2-7-C901 that prohibits a person from participating in the state procurement process.
20. "Defective data" means data that is inaccurate, incomplete, or outdated.
21. "Dentist" means a person licensed under A.R.S. Title 32, Chapter 11.
22. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
- ~~23. "Discussion" means "negotiation" as defined in R2-7-101(34).~~
- ~~24-23.~~ "Eligible procurement unit" means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency ~~for disabled individuals that serves individuals with disabilities~~ as defined in A.R.S. § ~~41-2631~~41-2636, that is eligible under a cooperative agreement to use Arizona state contracts.
- ~~25. "Enterprise Procurement Services" means state procurement office as defined in R2-7-101(50).~~
- ~~26-24.~~ "Filed" means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
- ~~27-25.~~ "Finished goods" means units of a manufactured product awaiting sale.
- ~~28-26.~~ "Force account" as used in A.R.S. § 41-2572, means work performed by the state's regularly employed personnel.
- ~~29-27.~~ "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
- ~~30-28.~~ "In writing" has the same meaning as "written" or "writing" in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
- ~~31-29.~~ "Interested party" means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
- ~~32-30.~~ "Legal counsel" means a person licensed as an attorney by the Arizona Supreme Court.
- ~~33-31.~~ "May" means something is permissive.
- ~~34-32.~~ "Negotiation" means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by this Chapter.
- ~~35-33.~~ "Offer" means a response to a solicitation.
- ~~36-34.~~ "Offeror" means a person who responds to a solicitation.
- ~~37-35.~~ "Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
- ~~38-36.~~ "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
- ~~39-37.~~ "Procurement file" means the official records file of the director whether located in the office of the director or at a public procurement unit. The procurement file shall include (electronic or paper) the following:
- a. List of notified vendors,
 - b. Final solicitation,
 - c. Solicitation amendments,

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- d. Bids and offers,
- e. ~~Final proposal revisions~~ Offer revisions and best and final offers,
- f. Discussions,
- g. Clarifications,
- h. Final evaluation reports, and
- i. Additional information, if requested by the agency chief procurement officer and approved by the state procurement administrator.

~~40-38.~~ "Procurement request" means the document that initiates a procurement.

~~41-39.~~ "Proposal" means an offer submitted in response to a solicitation.

~~42-40.~~ "Prospective offeror" means a person that expresses an interest in a specific solicitation.

~~43-41.~~ "Raw materials" means goods, excluding equipment and machinery, purchased for use in manufacturing a product.

~~44-42.~~ "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.

~~45-43.~~ "Shall" means something is mandatory.

~~46-44.~~ "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than \$4 million for the last complete fiscal year.

~~47-45.~~ "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.

~~48-46.~~ "Source selection method" means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.

~~49-47.~~ "State procurement administrator" means the individual appointed by the director as a chief procurement officer for ~~a~~ the state, or a state procurement administrator's authorized designee. A different title may be used for this position.

~~50-48.~~ "State procurement office" means an office that acts under the authority delegated to the state procurement administrator.

~~51-49.~~ "Suspension" means an action taken by the director under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.

~~52-50.~~ "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

PART B. COMPETITIVE SEALED BIDDING

R2-7-B301. Solicitation

- A. An agency chief procurement officer shall issue an invitation for bids at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.
- B. An agency chief procurement officer shall:
 - 1. Advertise the procurement in accordance with A.R.S. § 41-2533(C); and
 - 2. At a minimum, provide written notice to the prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.
- C. An agency chief procurement officer shall include the following in the solicitation:
 - 1. Instruction to offerors, including:
 - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
 - b. The deadline date for requesting a substitution or exception to the solicitation;
 - c. The manner by which the offeror is required to acknowledge amendments;
 - d. The minimum required information in the offer;
 - e. The specific requirements for designating trade secrets and other proprietary information as confidential;

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- f. Any specific responsibility criteria;
 - g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
 - h. Any evaluation criteria;
 - i. A statement of where documents incorporated by reference are available for inspection and copying;
 - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
 - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
 - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
 - n. Any bid security required;
 - o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
 - q. Any other offer submission requirements;
2. Specifications, including:
- a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or ~~equal~~ equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
 - c. Any other specification requirements;
3. Terms and Conditions, including:
- a. Whether the contract will include an option for extension; and
 - b. Any other contract terms and conditions.

R2-7-B302. Pre-offer Conferences

An agency chief procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be ~~not less than seven days before~~ a reasonably sufficient time prior to the offer due date and time, ~~unless the agency chief procurement officer makes a written determination that the specific needs of the procurement justify a shorter time.~~ Statements made during a pre-offer conference are not amendments to the solicitation.

R2-7-B306. Receipt, Opening, and Recording of Offers

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers ~~publicly, in the presence of one or more witnesses, after the offer due date and time. The agency chief procurement officer shall announce the name of the offeror, the amount of each offer, and any other relevant information as determined by the agency chief procurement officer.~~ publicly, in the presence of one or more witnesses, after the offer due date and time. The agency chief procurement officer shall announce the name of the offeror, the amount of each offer, and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall record the name of each offeror, ~~and~~ the amount of each offer, and any other relevant information as determined by the agency chief procurement officer. ~~The reader and the witness shall sign the record of offers and place it in the procurement file.~~ The agency chief procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

R2-7-B312. Bid Evaluation

- A. An agency chief procurement officer shall evaluate offers to determine which offer provides the lowest cost to the state in accordance with any objectively measurable factors set forth in the solicitation. ~~Examples of such factors include, but are not limited to, transportation cost, energy cost, ownership cost, and any other identifiable cost or life cycle cost formula. The factors need not be precise predictors of actual future costs, but to the extent possible the factors shall be reasonable estimates based upon information the agency chief procurement officer has available concerning future use.~~
 - 1. ~~An agency chief procurement officer shall consider life cycle costs and application benefits when evaluating offers for the procurement of material or services identified in A.R.S. § 41-2553.~~
- ~~2.B.~~ An agency chief procurement officer shall consider total life cycle costs including residual value when evaluating offers

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for the procurement of materials or services identified in A.R.S. § 41-2554.

BC. An agency chief procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The agency chief procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.

CD. If there are two or more low, responsive offers from responsible offerors that are identical in price, the agency chief procurement officer shall make the award by drawing lots. If time permits, the agency chief procurement officer shall provide the offerors involved an opportunity to attend the drawing. The agency chief procurement officer shall ensure that the drawing is witnessed by at least one person other than the agency chief procurement officer.

R2-7-B314. Contract Award

A. An agency chief procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.

B. The agency chief procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.

C. The agency chief procurement officer shall notify all offerors of an award.

D. After a contract is awarded, the agency chief procurement officer shall return any bid security provided by the offeror.

E. Within ~~40~~ 3 days after a contract is awarded, the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

R2-7-B315. Mistakes Discovered After Award

A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:

1. Explanation of the mistake and any other relevant information;
2. A request for correction including the corrected offer or a request for withdrawal; and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:

1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
2. Cancel all or part of the award; or
3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, ~~if the offer acceptance period has not expired,~~ the agency chief procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, within 120 days from the date of award, based on the considerations of fair competition and the best interest of the state.

R2-7-B316. Multistep Sealed Bidding

~~**A.** An agency chief procurement officer shall obtain approval from the state procurement administrator before using multi-step sealed bidding as a source selection method.~~

~~**B.** To obtain approval for multistep sealed bidding, an agency chief procurement officer shall submit a written request to the state procurement administrator.~~

- ~~1. The written request shall contain all of the following:
 - ~~a. An explanation that specifications or purchase descriptions are not available or sufficiently complete to permit full competition without technical evaluations and negotiations to ensure mutual understanding between each offeror and the state;~~
 - ~~b. An identification of definite criteria that exist for evaluation of technical offers;~~
 - ~~e. An identification that more than one available and technically qualified source exists; and~~
 - ~~d. Confirmation that a fixed-price contract will be used.~~~~
- ~~2. The state procurement administrator shall:
 - ~~a. Issue written approval, with any conditions or restrictions;~~
 - ~~b. Request additional information from the agency chief procurement officer; or~~
 - ~~e. Deny the request.~~~~

CA. Multi-step sealed bidding is initiated by the issuance of an invitation to submit technical offers. An agency chief procurement officer shall issue an invitation to submit technical offers that contains all of the following information:

1. Notice that the procurement is conducted in two phases. In phase one unpriced technical offers are considered and selected. In phase two there is competitive bidding by offerors whose offers were selected in phase one;
2. The best description of the material or service solicited;
3. The requirements for each technical offer, such as drawings and descriptive literature;
4. The criteria for evaluating each technical offer;
5. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed; and
6. A statement that negotiations may be held regarding the unpriced technical offer.

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- ~~D.B.~~ An agency chief procurement officer may conduct a pre-offer conference. If a pre-offer conference is conducted, it shall be not less than seven days before the offer due date and time, unless the agency chief procurement officer makes a written determination that the specific needs of the procurement justify a shorter time period. Statements made during the pre-offer conference shall not be considered modifications to the solicitation. An agency chief procurement officer may conduct a pre-offer conference within a reasonably sufficient time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R2-7-B303.
- ~~E.C.~~ An agency chief procurement officer may amend an invitation to submit technical offers before or after submission of unpriced technical offers. The agency chief procurement officer shall notify all suppliers who received the solicitation of the amendment and specify a revised offer due date and time. These suppliers may submit new offers or revise existing offers. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.
- ~~F.D.~~ Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Late technical offers are not considered except under the circumstances set forth in R2-7-B307(B). The agency chief procurement officer shall not disclose the contents of an unpriced technical offer to unauthorized persons.
- ~~G.E.~~ Each unpriced technical offer shall be evaluated in accordance with the criteria in the invitation to submit technical offers to determine whether the offer is acceptable, potentially acceptable, or unacceptable. If the offer is unacceptable, the agency chief procurement officer shall issue a written determination that the offer is unacceptable, state the basis for the determination, and place the determination in the procurement file. If the agency chief procurement officer determines that an offeror's unpriced technical offer is unacceptable, the agency chief procurement officer shall notify that offeror in writing of the determination and indicate in the notice that the offeror is not afforded an opportunity to amend a technical offer.
- ~~H.F.~~ An agency chief procurement officer may conduct negotiations with any offeror that submits an acceptable or potentially acceptable technical offer. During negotiations, the agency chief procurement officer shall not disclose any information obtained from an unpriced technical offer to any other offeror. After negotiations, the agency chief procurement officer shall establish a closing date for receipt of final technical offers and provide written notice of the closing date to offerors that submitted acceptable or potentially acceptable offers. The agency chief procurement officer shall maintain a record of all negotiations.
- ~~I.G.~~ After receipt of final technical offers, an agency chief procurement officer shall determine which technical offers are acceptable for consideration in phase two. The agency chief procurement officer shall notify in writing each offeror whose technical offer was determined unacceptable.
- ~~J.H.~~ At any time during phase one, an offeror may withdraw an offer.
- ~~K.I.~~ Upon completion of phase one, an agency chief procurement officer shall issue a solicitation and conduct phase two as prescribed under R2-7-B301 through R2-7-B315 as a competitive sealed bidding procurement, except that the solicitation shall be issued only to offerors that submitted acceptable technical offers in phase one.
- ~~L.J.~~ An agency chief procurement officer shall ensure that unpriced technical offers of unsuccessful offerors are available for public inspection except to the extent that the offer is confidential under R2-7-B306.

PART C. COMPETITIVE SEALED PROPOSALS

R2-7-C301. Solicitation

- ~~A.~~ Before soliciting for offers under this Section, an agency chief procurement officer shall determine in writing that an invitation for bid is not practicable or advantageous to the state before soliciting for offers under this Section. Competitive sealed bidding may not be practicable or advantageous if it is necessary to:
- ~~1. Use a contract other than a fixed-price type;~~
 - ~~2. Negotiate with offerors concerning the technical and price aspects of their offers and any other aspects of their offer or the solicitation;~~
 - ~~3. Permit offerors to revise their offers; or~~
 - ~~4. Compare the different price, quality, and contractual factors of the offers submitted.~~
- ~~B.~~ The state procurement administrator may make a class determination that it is either not practicable or not advantageous to the state to procure specified types of materials or services by invitation for bid. The state procurement administrator may modify or revoke a class determination at any time.
- ~~C.A.~~ An agency chief procurement officer shall issue a request for proposal at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.
- ~~D.B.~~ The agency chief procurement officer shall:
1. Advertise in accordance with A.R.S. § 41-2534(C); and

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2. At a minimum, provide written notice to prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.

E.C. The agency chief procurement officer shall include the following in the solicitation:

1. Instructions to offerors, including:
 - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
 - b. The deadline date for requesting a substitution or exception to the solicitation;
 - c. The manner by which the offeror is required to acknowledge amendments;
 - d. The minimum information required in the offer;
 - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
 - f. Any specific responsibility or susceptibility criteria;
 - g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
 - h. Evaluation factors and the relative order of importance;
 - i. A statement of where documents incorporated by reference are available for inspection and copying;
 - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
 - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
 - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
 - n. Any offer security required;
 - o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p. Any cost or pricing data required;
 - q. The type of contract to be used;
 - r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award ~~and that fall within the competitive range~~; and
 - s. Any other offer requirements specific to the solicitation.
2. Specifications, including:
 - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equal equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
 - c. Any other specification requirements specific to the solicitation.
3. Terms and Conditions, including:
 - a. Whether the contract is to include an extension option; and
 - b. Any other contract terms and conditions.

R2-7-C302. Pre-offer Conferences

~~An agency chief procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be not less than seven days before, unless the agency chief procurement officer makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre-offer conference are not amendments to the solicitation.~~ An agency chief procurement officer may conduct one or more pre-offer conferences within a reasonable time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R2-7-B303.

R2-7-C306. Receipt, Opening, and Recording of Offers

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers ~~publicly, in the presence of one or more witnesses~~, after the offer due date and time. The agency chief procurement officer shall ~~announce and~~ record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer

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shall make the record of offers available for public viewing.

- D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

R2-7-C311. Determination of Not Susceptible for Award

- A. An agency chief procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award ~~or not within the competitive range~~. The agency chief procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
 - 1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
 - 2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
 - 3. The offer is not susceptible for award ~~or is not within the competitive range~~ in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award ~~or is in the competitive range~~, the offer should be included for further consideration.
- B. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award ~~or not within the competitive range~~, unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors.

R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers

- A. An agency chief procurement officer shall establish procedures and schedules for conducting negotiations. The agency chief procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.
- B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the agency chief procurement officer shall confirm the negotiations in writing and provide to the offeror.
- C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be ~~in the competitive range~~ ~~or~~ reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.
- D. An agency chief procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the state based on the requirements and the evaluation factors set forth in the solicitation.
- E. Responsible offerors determined to be susceptible for award ~~and within the competitive range~~, with which negotiations have been held, may revise their offer in writing during negotiations.
- F. An offeror may withdraw an offer at any time before the ~~final proposal revision~~ best and final offer due date and time by submitting a written request to the agency chief procurement officer.

R2-7-C315. ~~Final Proposal Offer Revisions and Best and Final Offers~~

- A. An agency chief procurement officer ~~shall~~ may request written ~~final proposal~~ revisions to an offer, from any offeror with whom negotiations have been conducted, unless the offeror has been determined ~~not within the competitive range or not susceptible for award under R2-7-C311 or nonresponsible under R2-7-C312~~. The agency chief procurement officer shall include in the written request:
 - 1. The date, time, and place for submission of ~~final proposal offer~~ revisions; and
 - 2. A statement that if offerors do not submit a written notice of withdrawal or a written ~~final proposal offer~~ revision, their immediate previous written ~~proposal revision offer~~ will be accepted as their final ~~proposal revision offer~~.
- B. An agency chief procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted. The agency chief procurement officer shall include in the written request:
 - 1. The date, time, and place for submission of best and final offer; and
 - 2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.
- ~~BC.~~ The agency chief procurement officer shall request written ~~final proposal revisions~~ best and final offers only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.
- ~~CD.~~ If an apparent mistake, relevant to the award determination, is discovered after opening of ~~final proposal revisions~~ best and final offers, the agency chief procurement officer shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
 - 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 - 2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information; and
 - b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- ~~DE.~~ An offeror who discovers a mistake in their ~~final proposal revision~~ best and final offer may request withdrawal or correction in writing, and shall include the following in the written request:

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1. Explanation of the mistake and any other relevant information;
2. A request for correction including the corrected offer or a request for withdrawal; and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

~~EE.~~ In response to a request made under subsections (C) or (D), the agency chief procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the state. If an offeror does not provide written confirmation of the ~~final proposal revision~~ best and final offer, the agency chief procurement officer shall make a written determination that the most recent written ~~proposal revision~~ best and final offer submitted is the ~~final proposal revision~~ final best and final offer.

R2-7-C316. Evaluation of Offers

- A. An agency chief procurement officer shall evaluate offers and ~~final proposal revisions~~ best and final offers based on the evaluation criteria contained in the request for proposals. The agency chief procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.
- B. An agency chief procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the agency chief procurement officer. The evaluation report shall supersede all previous draft evaluations or evaluation reports. The agency chief procurement officer may:
 1. Accept or reject the findings of the evaluation committee,
 2. Request additional information from the evaluation committee, or
 3. Replace the evaluation committee.
- C. The agency chief procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

R2-7-C317. Contract Award

- A. An agency chief procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the state based on the evaluation factors set forth in the solicitation. The agency chief procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- ~~B. Before awarding any cost reimbursement contract, the agency chief procurement officer shall determine in writing that:~~
 1. The offeror's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated, and
 2. It is adequate to allocate costs pursuant to Article 7.
- ~~C.~~ The agency chief procurement officer shall notify all offerors of an award.
- ~~D.~~ After contract award, the agency chief procurement officer shall return any offer security provided by the offeror.
- ~~E.~~ Within ~~10~~ 3 days after contract award the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

R2-7-C318. Mistakes Discovered After Award

- A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in their written request:
 1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
 1. Allow correction of the mistake;
 2. Cancel all or part of the award; or
 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, ~~if the offer acceptance period has not expired~~, the agency chief procurement officer may award all or part of the contract to the next responsible offeror, within 120 days of contract award, whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

R2-7-D301. Applicability

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, including construction, the agency chief procurement officer shall issue a request for quotation under ~~R2-7-D303~~ R2-7-D302 unless any of the following apply:

1. The purchase can be made from a state or agency contract;
2. The purchase can be made from a set-aside organization as established in Article 10;
3. The purchase is not expected to exceed ~~\$5,000.00~~ \$10,000.00;

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~~4. The purchase is made as a sole source procurement under A.R.S. § 41-2536;~~

~~5.4. The agency chief procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.~~

R2-7-D302. Solicitation – Request for Quotation

- A. A request for quotation shall be issued for purchases estimated to exceed ~~\$5,000~~ \$10,000 but less than that specified in A.R.S. § 41-2535. The agency chief procurement officer shall include the following in the solicitation:
1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
 2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 3. The minimum information that the offer shall contain;
 4. Any evaluation factors;
 5. Whether negotiations may be held;
 6. Any contract options including renewal or extension;
 7. The uniform terms and conditions by text or reference; and
 8. Any other terms, conditions, or instructions specific to the procurement.
- ~~B. The request for quotation shall include a statement that only a small business, as defined in R2-7-101, shall be awarded a contract, unless any of the following apply:~~
- ~~1. The purchase has been unsuccessfully competed under R2-7-D303, including failure to obtain fair and reasonable prices; or~~
 - ~~2. The agency chief procurement officer has made a written determination that restricting the procurement to small business is not practical under the circumstances.~~
- B. The agency chief procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses registered on the prospective suppliers list.
- C. The request for quotation shall include a statement that only a small business, as defined in R2-7-101, shall be awarded a contract, unless any of the following apply:
1. The purchase has been unsuccessfully competed under Subsection (B) of this Section, including failure to obtain fair and reasonable prices;
 2. The agency chief procurement officer has made a written determination that less than three small businesses are registered on the prospective suppliers list; or
 3. The agency chief procurement officer has made a written determination prior to issuing a request for quotation that restricting the procurement to small business is not practical under the circumstances.

~~R2-7-D303. Request for Quotation Issuance Repealed~~

~~The agency chief procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses. The agency chief procurement officer shall rotate suppliers invited to submit quotations. The agency chief procurement officer may cancel the request for quotation at any time.~~

~~R2-7-D304.~~R2-7-D303. Contract Award

- A. If only one responsive offer is received, the agency chief procurement officer shall ~~explain in writing whether award of the contract is advantageous to the state and place the determination in the procurement file.~~ determine if the price is fair and reasonable, and in the best interest of the state to award a contract and place the determination in the procurement file. If time permits, the agency chief procurement officer may initiate a second request for quotation if it is reasonable to believe that additional responses will be received.
- B. The agency chief procurement officer shall award a contract to the small business determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation. If award is pursuant to ~~R2-7-D302(B)(1) or R2-7-D302(B)(2)~~R2-7-D302(C), the agency chief procurement officer shall award a contract to the offeror determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation.
- C. The agency chief procurement officer shall place the written basis for the award in the procurement file.
- D. The agency chief procurement officer shall make the procurement file available to the public on the date of contract award, except for those items considered confidential under R2-7-103.

~~R2-7-D305.~~R2-7-D304. Purchases of ~~\$5,000~~ \$10,000 and Less

The agency chief procurement officer shall use reasonable judgment in awarding contracts of ~~\$5,000~~ \$10,000 and less that are advantageous to the state. The agency chief procurement officer may but is not required to request quotations.

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**PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT
PRESCRIBED IN A.R.S. § 41-2535**

R2-7-E301. Sole Source Procurements

- A.** For the purposes of this Section, the term “sole-source procurement” means a material or service procured without competition when:
1. There is only a single source for the material or service, or
 2. No reasonable alternative source exists.
- ~~**B.** The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit a written request for approval to procure from a sole source to the state procurement administrator before proceeding. The request shall include the following information:~~
- ~~1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists;~~
 - ~~2. The name of the proposed supplier;~~
 - ~~3. The duration and estimated total dollar value of the proposed procurement;~~
 - ~~4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702, and~~
 - ~~5. A description of efforts made to seek other sources.~~
- B.** This Section applies to only sole source procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535.
- C.** The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit a written request for approval to procure from a sole source to the state procurement administrator before proceeding. The request shall include the following information:
1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists.
 2. The name of the proposed supplier.
 3. The duration and estimated total dollar value of the proposed procurement.
 4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702, and
 5. A description of efforts made to seek other sources.
- ~~**D.** The state procurement administrator shall send notice to registered vendors on the electronic system to invite comments on the sole-source request for three working days. Following this period, the state procurement administrator shall either:~~
- ~~1. Issue written approval, with any conditions or restrictions;~~
 - ~~2. Request additional information from the agency chief procurement officer; or~~
 - ~~3. Deny the request if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.~~
- ~~**E.** If the sole-source procurement is authorized or approved, the agency chief procurement officer shall negotiate a contract advantageous to the state.~~
- ~~**F.** The agency chief procurement officer shall keep a record of all sole-source procurements pursuant to A.R.S. § 41-2551.~~

**PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS,
LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS**

R2-7-F301. Statement of Qualifications

- A.** The agency chief procurement officer may request that persons desiring to provide the services specified in A.R.S. § 41-2513 submit statements of qualifications on a prescribed form which shall include, but not be limited to the following information:
1. Technical education and training;
 2. General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards; and
 3. Any other relevant information requested by the purchasing agency.
- B.** Persons who have submitted statement of qualifications may submit additional information or change information that was previously submitted at any time.
- C.** The agency chief procurement officer may, in lieu of subsection (A), incorporate the statement of qualifications as part of the solicitation pursuant to R2-7-F302.

R2-7-F302. Solicitation

- A.** For procurements not exceeding the amount prescribed in A.R.S. § 41-2535, except as authorized under A.R.S. § 41-2536, the agency chief procurement officer shall comply with Part D of this Article.
- B.** For procurements exceeding the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall fol-

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low the procedures below, except as authorized under A.R.S. §§ 41-2536 or 41-2537:

1. The agency chief procurement officer shall issue a request for proposal providing adequate notice based on the circumstances.
2. The agency chief procurement officer shall provide notice to prospective suppliers registered at the state procurement office for the specific service and, if R2-7-F301 has been implemented, to persons who have submitted statements of qualifications for the particular services solicited, or both.
3. The agency chief procurement officer shall include the following in the solicitation:
 - a. A specific offer due date and time, or that offers will be accepted on an open and continuous basis. If offers are accepted on an open and continuous basis, the designated, continuous day and time in which offers will be opened;
 - b. The location where offers will be received;
 - c. The offer acceptance period;
 - d. The manner by which the offeror is required to acknowledge amendments;
 - e. A description of the services needed;
 - f. The type of qualifications, experience, licensing, or other information required;
 - g. The minimum information in the offer;
 - h. Any evaluation criteria;
 - i. Any applicable contract terms and conditions;
 - j. A statement that negotiations may be conducted to determine the offeror's qualifications for further consideration;
 - k. Any cost or pricing data required;
 - l. The type of contract to be used;
 - m. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - n. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices; and
 - o. A statement of whether the services shall be retained for a stated or ongoing period of time and whether the contract is to include any option for renewal or extension.

R2-7-F303. Solicitation Amendment

- A. ~~A~~ The agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
 1. Make changes in the solicitation;
 2. Correct defects or ambiguities;
 3. Provide additional information or instructions; or
 4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.
- B. If a solicitation is changed by a written solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

R2-7-F304. Cancellation of Solicitation

- A. Based on the best interest of the state, the agency chief procurement officer may cancel a solicitation at any time before award.
- B. Based on the best interest of the state, the agency chief procurement officer may cancel an open and continuous solicitation at any time during the active period of the solicitation. Contracts that have already been awarded in accordance with the solicitation shall not be affected by the cancellation.
- C. The agency chief procurement officer shall notify offerors of the cancellation in writing.
- D. The agency chief procurement officer shall return any offers received to the offerors.

R2-7-F305. Receipt, Opening, and Recording of Offers

- A. ~~A~~ The agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers ~~publicly, in the presence of one or more witnesses,~~ after the offer due date and time. The agency chief procurement officer shall announce and record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. ~~The reader and the witness shall sign the record of offers and place it in the procurement file.~~ The agency chief procurement officer shall make the record of offers available for public viewing.

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- D. Except for the information identified in R2-7-C306(C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

R2-7-F306. Timely and Late Modifications or Withdrawals of Offer

- A. An authorized representative of an offeror may withdraw an offer in writing if the written request for withdrawal is received by the agency chief procurement officer before the designated offer due date and time or the designated, continuous offer due day and time.
- B. An offeror may withdraw or modify an offer at any time before the due date and time or designated, continuous day and time for offer opening and before contract award by submitting a written request to the agency chief procurement officer.
- C. If a modification or a withdrawal is not received by the designated offer due date and time or the designated, continuous day and time for offer opening, the agency chief procurement officer shall determine the modification or withdrawal as late. The agency chief procurement officer shall reject a late modification or withdrawal unless:
1. The document is received before the contract award; and
 2. The document would have been received by the designated offer due date and time or the designated, continuous day and time for offer opening but for the action or inaction of state personnel directly serving the purchasing agency.
- D. Upon receiving a late modification or withdrawal, the procurement officer shall:
1. If the document is hand delivered, refuse to accept delivery; or
 2. If the document is not hand delivered, record the time and date of receipt, and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- E. The agency chief procurement officer shall document a refusal under (D)(1) and place this document or a copy of the notice required in (D)(2) in the procurement file.

R2-7-F307. Late Offers

- A. If a specific offer due date and time has been identified in the solicitation, the agency chief procurement officer shall reject any offer received after the specified offer due date and time ~~unless:~~
1. It was transmitted through an eProcurement system designated in the solicitation, and the offer has a submitted status in the system prior to the offer due date and time; or
 2. There is evidence to establish that the hand-delivered offer was ~~The procurement officer shall accept a late offer if the document is received before contract award at the location designated in the solicitation or it and would have been received by the offer due date and time but for the action or inaction~~ failure of state personnel directly serving the purchasing agency.
- ~~2B.~~ Upon receiving a late offer, the agency chief procurement officer shall:
- ~~a.1.~~ If the document is hand delivered, refuse to accept the delivery; or
 - ~~b.2.~~ If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- ~~3-C.~~ The agency chief procurement officer shall document a late offer in the procurement file; with as much information as available.
- ~~B-D.~~ If the solicitation has a designated, continuous day and time for offer opening and an offer is received after the day and time for offer opening, the agency chief procurement officer shall accept and log in the offer for the next scheduled day and time for offer opening.

R2-7-F308. Negotiations with Offerors

- A. The agency chief procurement officer may conduct negotiations with any or none of the offerors.
- B. The agency chief procurement officer may conduct negotiations to improve offers in such areas as cost, price, specifications, performance, or terms and conditions, and to achieve best value for the state.
- C. The agency chief procurement officer shall document the results of negotiations in writing by requesting a best and final offer as defined in R2-7-C315. ~~Final proposal revisions are not required, but may be used at the discretion of the procurement officer.~~
- D. The agency chief procurement officer shall ensure that negotiations do not disclose any information derived from other offers.

R2-7-F309. Contract Award

- A. The agency chief procurement officer shall award the contract to the offeror best qualified based on the evaluation factors set forth in the request for proposal and after making a written determination that the price is fair and reasonable. The agency chief procurement officer shall not award a contract based solely on price.
- B. The agency chief procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- C. The agency chief procurement officer shall award contracts pursuant to A.R.S. § 41-2513(B) through (D) where applica-

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ble.

- D. Within ~~40~~ 3 days after contract award the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

R2-7-F310. Mistakes Discovered After Award

- A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
 - 1. Explanation of the mistake and any other relevant information;
 - 2. A request for correction including the corrected offer or a request for withdrawal; and
 - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
 - 1. Allow correction of the mistake;
 - 2. Cancel all or part of the award; or
 - 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, ~~if the offer acceptance period has not expired,~~ the agency chief procurement officer may award all or part of the contract to the next responsible offeror, within 120 days of contract award, based on whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

ARTICLE 4. SPECIFICATIONS

R2-7-403. Determination for Use of Brand Name Type Specifications

- A. The state procurement administrator may authorize the use of a brand name only specification if the state procurement administrator makes a written determination that only the identified brand name item will satisfy the state's needs.
- B. The agency chief procurement officer shall, to the extent practicable, identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve the maximum practical competition.
- C. The agency chief procurement officer may use a brand name or ~~equal~~ equivalent specification when the agency chief procurement officer determines this type of specification is in the best interest of the state.

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND ~~SPECIFIED~~ SPECIFIC PROFESSIONAL SERVICES

R2-7-503. Procurement of Construction Using Alternate Project Delivery Method

The agency chief procurement officer may use an alternate project delivery method ~~if the agency chief procurement officer determines in writing that~~ if it is in the best interest of the state pursuant to A.R.S. §§ 41-2578 and 41-2579, based on the following factors:

- 1. Cost and cost control method,
- 2. Value engineering,
- 3. Market conditions,
- 4. Schedule,
- 5. Required specialized expertise,
- 6. Technical complexity of the project, or
- 7. Project management.

ARTICLE 6. CONTRACT CLAUSES

R2-7-604. Contract Change Orders and Amendments

- A. The agency chief procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.
- B. Any contract change order or amendment or aggregate change orders or amendments of a contract not covered under subsection (A) that exceeds ~~\$100,000~~ 25% of the original contract amount may be executed only if the state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, determines in writing that the change order or amendment is advantageous to the state and the price is determined fair and reasonable pursuant to R2-7-702.
- C. The agency chief procurement officer may, in situations in which time or economic consideration preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements under A.R.S. § 41-2537.

R2-7-605. Multi-term Contracts

- A. ~~With a written determination from state procurement administrator that an extension of time would be advantageous to the state, the~~ The agency chief procurement officer may enter into a contract for materials or services for a period exceeding

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the time identified in A.R.S. § 41-2546(A)-if a written approval from the state procurement administrator is issued prior to offer due date and time.

- B. The agency chief procurement officer shall submit a request to the state procurement administrator in writing indicating:
 - 1. The time period requested for the contract;
 - 2. Documentation that the estimated requirements are reasonable and continuing;
 - 3. Documentation to demonstrate why more frequent competition is not practicable and that such a contract will serve the best interests of the state ~~by encouraging effective competition or otherwise promoting economies in state procurement.~~
- C. The agency chief procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

R2-7-606. Terms and Conditions

- A. The state procurement administrator may publish uniform terms and conditions for use in solicitations and contracts issued by a state governmental unit.
- B. Prior to offer due date and time. ~~The~~ the state procurement administrator may authorize an agency chief procurement officer to make changes to uniform terms and conditions.
- C. After offer due date and time, an agency chief procurement officer may negotiate the uniform terms and conditions, as appropriate.

R2-7-607. Mandatory Statewide Contracts

State governmental units shall use existing Arizona state contracts to satisfy their needs for those materials and services covered under such contracts, unless authorized by the state procurement administrator.

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS

R2-7-A909. Remedies by the Director

If the Director sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination, or an award does not comply with procurement statutes and regulations, the director shall implement remedies as provided in R2-7-A904 or R2-7-A910.

R2-7-A910. ~~Dismissal Before Hearing~~ Informal Settlement Conference

In any protest, claim or debarment proceeding, the Director may request to hold an informal settlement conference with all interested parties. The conference may be held at any time prior to a final administrative decision. If an informal settlement conference is held, a person with the authority to act on behalf of the interested party must be present. The agency chief procurement officer shall notify the interested parties in writing that statements, either written or oral, made at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative or judicial hearing. Should any interested party choose not to participate in an informal settlement conference, the Director, or the Director's designee, in his or her discretion, may conduct the conference with those interested parties that appear, or reschedule the conference, or terminate the conference. If the informal settlement conference results in a full settlement agreement between all interested parties, that agreement shall be reduced to writing, signed by the interested parties, and entered as the final administrative decision in the proceeding. If the interested parties do not reach agreement on all matters at issue in the proceedings, but do agree to resolve one or some of the issues, that partial agreement shall be reduced to writing, be signed by the interested parties, and bind the interested parties through the remainder of the proceedings. If the Director, or the Director's designee, participates in an informal settlement conference, the Director, or the Director's designee, may not participate in or attempt to influence the outcome of the final administrative decision. Further, in making a final administrative decision, the Director shall not give any weight to whether or not an informal settlement conference has been held, or to any consideration of the perceived success or failure of the informal settlement conference.

~~R2-7-A910.~~R2-7-A911. Dismissal Before Hearing

- A. The Director ~~shall~~ may dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
 - 1. The appeal does not state a valid basis for protest;
 - 2. The appeal is untimely as prescribed under R2-7-A905; or
 - 3. The appeal attempts to raise issues not raised in the protest.
- B. The Director shall notify the interested party, the agency chief procurement officer, and the state procurement administrator in writing of a determination to dismiss an appeal before hearing.

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~~R2-7-A911~~**R2-7-A912**, Hearing

The Director shall resolve appeals of solicitation or contract award decisions as contested cases under A.R.S. § 41-1092.07.

ARTICLE 10. INTERGOVERNMENTAL PROCUREMENT

R2-7-1003. Purchasing from a Cooperative Contract

- A.** The agency chief procurement officer shall not procure materials, services, professional services, construction or construction services from any cooperative contracts available under an existing Arizona state contract, unless authorized by the state procurement administrator.
- B.** If it is in the best interest of the state and at the discretion of the agency chief procurement officer, a cooperative contract may be used if the following criteria, at a minimum, are met:
1. The cooperative contract was awarded through the competitive process and documentation is available to substantiate the award, including:
 - a. Bidder's list.
 - b. Solicitation included evaluation factors.
 - c. Multiple offers received.
 - d. Bid tabulation and evaluation offers, and
 - e. Basis for cooperative contract award with established evaluation factors.
 2. Cost analysis to determine price is fair and reasonable as prescribed by R2-7-702;
 3. Review of cooperative contract terms and conditions; and
 4. Vendor's willingness to extend cooperative contract to the state.
- C.** Purchases under a cooperative contract as permitted by this subsection shall not, in the aggregate, exceed 25% of the initial value, or estimated value for term contracts, of the cooperative contract or \$500,000, whichever is lesser, unless the state procurement administrator determines in writing that the purchase is in the best interest to the state and the price is determined fair and reasonable pursuant to R2-7-702.

~~R2-7-1003~~**R2-7-1004**, Establishment of a Committee as Required by A.R.S. § 41-2636

- A.** The Director shall appoint a committee as required by A.R.S. §41-2636.
- B.** The committee shall be comprised of at least seven members, including the committee chair, representing:
1. Arizona Correctional Industries ("ACI");
 2. Arizona Industries for the Blind ("AIB");
 3. ~~Certified Non-Profit Agencies for Disabled Individuals (CNADI)~~ nonprofit agency that serves individuals with disabilities (CNAID) as defined in A.R.S. §41-2636(G);
 4. Other public procurement units.
- C.** The state procurement administrator or the state procurement administrator's designee shall chair the committee.
- D.** The committee chair may appoint sub-committees to assist in the evaluation of materials and services under consideration by the committee as a set-aside.
- E.** The committee shall meet at least once each fiscal year quarter to report compliance with A.R.S. §41-2636~~(E)~~**(F)**.

~~R2-7-1004~~**R2-7-1005**, Certification as Non-Profit Agency for Disabled Individuals

- A.** A non-profit organization may request written approval from the committee for certified status as a non-profit agency for disabled individuals for the purpose of being eligible for set-aside contracts by submitting information that satisfies the criteria identified in A.R.S. § 41-2636(A) and 41-2636(G).
- B.** The committee shall review the information submitted and respond to the requestor in writing by:
1. Approving the request for certification;
 2. Denying the request for certification; or
 3. Requesting more information.

~~R2-7-1005~~**R2-7-1006**, Application for Approval as Required by A.R.S. § 41-2636 to Become a Certified Non-Profit Agency for Disabled Individuals

- A.** A non-profit organization requesting certification by the committee as a non-profit agency for disabled individuals shall submit the following written information to the State Procurement Office, attention of the committee chair:
1. Name of organization, address, contact name, and contact information;
 2. Description of the non-profit activity center;
 3. Evidence of the organization's non-profit status;
 4. A statement that the business is operated in accordance with A.R.S. § 41-2636(G);
 5. A statement of Occupational Safety and Health Administration compliance; and
 6. The signature and title of the responsible party within the applicant's organization.
- B.** The committee shall review the submitted application at the next scheduled committee meeting and may do any of the following:
1. Approve the organization as a certified non-profit agency for disabled individuals;

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2. Table the application and request additional information; or
3. Decline the application.

~~R2-7-1006~~-R2-7-1007. Approval of Specific Materials or Services for Set-aside Use

- A. ACI, AIB, and ~~CNAD~~ CNAID shall submit information ~~required by A.R.S. § 41-2636(B)~~ to the committee to request approval of the material or service for mandatory set-aside use. The applicant shall include the following information:
1. A description of the specific material or service;
 2. The pricing offered;
 3. Documentation that the pricing offered is fair market pricing; and
 4. Information regarding availability.
- B. The committee shall evaluate each offered material or service to determine:
1. The existence and extent of a need within state governmental units for the material or service;
 2. The ability to produce and deliver the material or service to meet the reasonable requirements of the state governmental units; and
 3. Whether the offered price for the material or service is reasonable.
- C. The committee may:
1. Approve the requested material or service for use as a mandatory set-aside contract;
 2. Establish a sub-committee to study and make a recommendation on the request;
 3. Request additional information;
 4. Deny the request; or
 5. Designate the material or service as available for optional use by a state governmental unit or local public procurement unit under A.R.S. §41-2636~~(D)~~(E).

~~R2-7-1007~~-R2-7-1008. Contract Awards Directed by the Committee

- A. The State Procurement Office or the agency chief procurement officer designated by the state procurement administrator shall enter into a contract as directed by the committee. Such contracts shall not exceed five years, including any renewal options.
- B. Contracts may be renewed as follows:
1. For mandatory state contracts, if the State Procurement Office makes an initial determination that the criteria set forth in ~~R2-7-1006(B)~~ R2-7-1007(B) are no longer being met, it shall refer the matter to the committee for a final determination.
 2. The committee may:
 - a. Approve the contract renewal;
 - b. Establish a sub-committee to study and make a recommendation on contract renewal;
 - c. Request additional information;
 - d. Deny the contract renewal; or
 - e. Take other action as may be appropriate.
- C. The State Procurement Office or agency chief procurement officer designated by the state procurement administrator shall take action as directed by the committee.

~~R2-7-1008~~-R2-7-1009. Contract Awards Initiated by an Agency Chief Procurement Officer or Local Public Procurement Unit

- A. Competition is not required under A.R.S. § 41-2636(D) to enter into a contract for a material or service that is offered from a set-aside agency, but may be used at the discretion of the agency chief procurement officer or local public procurement unit. If competition is used, an agency chief procurement officer may either:
1. Seek competition only from applicable set-aside agencies; or
 2. Seek competition under A.R.S. §§ 41-2533, 41-2534, or 2535.
- B. Contracts awarded under this Section, shall not exceed five years, including any renewal options.

~~R2-7-1009~~-R2-7-1010. Set-aside Application Dispute Process

- A. Any interested party may dispute any committee decision.
- B. An interested party shall submit the dispute of a committee decision to the committee chair in writing and shall include:
1. Name, address, and telephone number of the person submitting the dispute;
 2. Signature of the person or the person's representative;
 3. Identification of the set-aside application disputed;
 4. A detailed statement of the legal and factual grounds for the dispute including copies of relevant documents; and
 5. The form of relief requested.
- C. A dispute of a set-aside application shall be filed with the committee chair through the State Procurement Office within 14 days after the person who submits the dispute knows or should have known the basis of the dispute.
- D. The committee chair shall promptly give written notice of the dispute to the set-aside applicant and the committee.
- E. The committee chair shall resolve the dispute. The committee chair shall issue a written decision within 14 days after the

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date the dispute has been filed. If the committee chair fails to issue a decision within 14 days, the person who submits the dispute may proceed as if the dispute has been denied.

- F. An appeal of the decision of the committee chair shall be made to the director under R2-7-A905, substituting “committee chair” for “agency procurement officer.”