

Janice K. Brewer
Governor



Brian C. McNeil
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

OFFICE OF THE DIRECTOR

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September 12, 2013

Re: Procurement Reform, HB 2599, Significant Procurement Role

Dear Agency/Board/Commission Directors:

The Arizona Department of Administration, in coordination and cooperation with several other agencies, has been working to provide a framework for the implementation of the Procurement Reform changes that become effective September 13, 2013.

A key component of the legislation requires all public officers and employees to disclose any substantial financial interest in procurement involving the agency. In addition, it is unlawful for a procurement officer or an employee having a significant procurement role to accept any position or have employment discussions with a person or firm lobbying or potentially responding to a solicitation during a defined time period. The new law also requires agency directors to play an active role in disseminating information to agency staff as well as review and make a determination for employees who seek clarification on their significant procurement role.

To ensure employees and the public are aware of a procurement activity, the State Procurement Office has developed a standard procedure and procurement disclosure forms to record these actions. Documents will be available on the State Procurement Office's (SPO) website (www.spo.az.gov) on Friday, September 13, 2013.

Additionally, an informational training overview of all aspects of HB 2599 has been developed for all State employees. The training is computer based and is available through Y.E.S. The training is entitled "2013 AZ Procurement Reform" and its course number is SPO000101V.

Should you have any questions or concerns, please feel free to contact Jean Clark (602.542.5511 or Jean.Clark@azdoa.gov) or me (602.542.1500 or Brian.McNeil@azdoa.gov). We look forward to working collaboratively with you and your agency procurement staff to transform procurement in the State of Arizona.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian C. McNeil".

Brian C. McNeil
Director

cc: Jean A. Clark, State Procurement Administrator

Attachments: Applicable statutes

Applicable Statutes — Significant Procurement Role

41-741. Definitions

14. "Significant procurement role" means any role that includes any of the following duties:

- (a) Participating in the development of a procurement as defined in section 41-2503.
- (b) Participating in the development of an evaluation tool.
- (c) Approving a procurement as defined in section 41-2503 or an evaluation tool.
- (d) Soliciting quotes greater than ten thousand dollars for the provision of materials, services or construction.
- (e) Serving as a technical advisor or an evaluator who evaluates a procurement as defined in section 41-2503.
- (f) Recommending or selecting a vendor that will provide materials, services or construction to this state.
- (g) Serving as a decision maker or designee on a protest or an appeal by a party regarding an agency procurement selection or decision.

41-753. Unlawful acts; violation; classification

D. An employee of any agency as defined in section 41-1001, including the office of the governor, who has a significant role in the procurement of materials, services or construction shall not accept an offer of employment from or have employment discussions with any person or entity lobbying for or potentially responding to a solicitation during a period beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins. An agency as defined in section 41-1001, including the office of the governor, shall inform its employees when the first nondisclosure agreement is signed on a particular solicitation, and the agency shall notify the state procurement administrator who shall post information regarding the date of the first nondisclosure agreement pertaining to a particular procurement activity on the department of administration's website.

41-2503. Definitions

35. "Significant procurement role" means any role that includes any of the following duties:

- (a) Participating in the development of a procurement.
- (b) Participating in the development of an evaluation tool.
- (c) Approving a procurement or an evaluation tool.
- (d) Soliciting quotes greater than ten thousand dollars for the provision of materials, services or construction.
- (e) Serving as a technical advisor or an evaluator who evaluates a procurement.
- (f) Recommending or selecting a vendor that will provide materials, services or construction to this state.
- (g) Serving as a decision maker or designee on a protest or an appeal by a party regarding an agency procurement selection or decision.

41-2517. Procurement officers and procurement employees; violation; classification

A. It is unlawful for a procurement officer or an employee having a significant procurement role to accept any position or have employment discussions with a person or firm lobbying or potentially responding to the solicitation beginning on signature of the first

nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant procurement role in the particular procurement.

- B. It is unlawful for a procurement officer or an employee having a significant procurement role to solicit an employment opportunity, regardless of who would receive such an opportunity, from any person or firm lobbying or potentially responding to a solicitation for the procurement of materials, services or construction beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant role in the particular procurement.
- C. It is unlawful for a person or firm lobbying or potentially responding to a solicitation for the procurement of materials, services or construction to offer employment to a procurement officer, a procurement employee or an employee having a significant procurement role beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant role in the particular procurement.
- D. In response to a written request from an employee seeking clarification on whether the employee has played a significant role in a procurement, the director shall issue a determination in writing within fifteen days after receiving the request. The director may make a determination in writing that this section and section 41-753, subsection d do not apply if a particular solicitation, sole source procurement or competition impracticable procurement has been canceled or is associated with the privatization of existing state services that would result in the elimination of the position in state service of an employee with a significant procurement role. The director may delegate the authority to make determinations pursuant to this subsection to a director of a state agency. An agency director or agency deputy director may request a determination from the office of the governor regarding whether the agency director or agency deputy director played a significant role in a particular procurement for the purposes of the one-year employment restriction, and the office of the governor shall make a determination within thirty days after the receipt of the written request.
- E. It is unlawful for a procurement officer or an employee who was previously employed by a person or firm responding to a solicitation to serve in a significant procurement role for a period of one year following the person's previous employment.
- F. On signature of a nondisclosure agreement pertaining to a particular solicitation, or at the time of a request for a sole source or competition impracticable procurement, a procurement officer or an employee having a significant role in the procurement shall provide written disclosure of any financial interest the officer or employee, or the spouse of the officer or employee, may hold.
- G. A person who knowingly violates this section is guilty of a class 2 misdemeanor. On conviction the person is ineligible for appointment to or employment in a position in the state personnel system for a period of five years and, if the person is an employee of this state at the time of conviction, is subject to suspension for not less than ninety days or dismissal.