

Procurement Reform Q & As

(Referencing Chaptered Version of HB 2599)

Table of Contents

General Procurement Reform Questions.....Page 2

Why is the state expanding exemptions in the Arizona Procurement Code? Doesn't that mean less competition and increased costs?
Why are you expanding procurement authority in ADOA?
Is training and outreach going to require more staff? Can it be privatized?
Why are you adapting the written determinations? Won't that mean less transparency?
Why raise the informal bid limit to \$100,000? Doesn't that mean less competition?
I'm still not sure why the change to cooperative purchases? Can you explain?
Will there be rules guiding cooperative purchasing?
Will striking the language surrounding competitive sealed bidding (41-2534) eliminate the state's ability to use competition impracticable justifications?
How much money does the state spend annually on procurements?
How many protests and appeals to protests does the state handle annually?
Can state employees who serve in a significant procurement role have a financial interest in a firm responding to a solicitation?
Why does the bill include a timeframe within which the ADOA Director must make a decision on an appeal? What is the exact timeframe?
Would requiring an agency chief procurement officer to be an employee of the ADOA State Procurement Office be unconstitutional based on principles articulated in R.L. Augustine Const. Co., Inc. v. Peoria Unified School Dist. No. 11, 936 P.2d 554 (1997)?
Why is the state interested in evaluating vendor performance?
How will vendor performance be evaluated?
Why is the bill removing the requirement to weight bid criteria (41-2533)?
Under the competitive sealed proposal provision (41-2534), why the change from "competitive range" to "reasonably susceptible to being selected for award?"

Lobbying Provision.....Page 5

With the expanded definition of lobbying including the attempt to influence procurements, how will lobbyists know about the new requirements and that they must register with the Secretary of State?
Will this legislation require sales and marketing individuals to register as lobbyists if they wish to pitch their company's products and services to state agencies?
Will this bill create an uneven playing field by giving an advantage to a procurement specialist consultant?
How many other states have a procurement lobbying provision?
Will the proposed law create an administrative burden on lobbying companies?

No Hire Provision.....Page 6

How will vendors know when the time period begins that they cannot solicit state employees for employment?
How will state employees and the vendor community become aware of the new requirements under the proposed legislation?
How will the prohibition for soliciting employment be handled when contracting for the privatization of state operations?
If there is a dispute in the future regarding the hiring provision, who will monitor the timing of the procurement process?
How far reaching is the no hire provision? Will it extend to someone who moves out-of-state?
What happens if a solicitation is cancelled? Will employees and vendors be in limbo in perpetuity?
Do individuals providing advice about financing or paying for a procurement need to register as a lobbyist?

ProcureAZ Questions.....Page 7

What is ProcureAZ and how does it work?
When does ProcureAZ notify vendors of pending procurement solicitations?
Is there currently any marketing of the ProcureAZ system?
How many vendors are registered on ProcureAZ?
How old is the ProcureAZ system?
Have there been any issues or flaws with ProcureAZ?
Do all state agencies use ProcureAZ?

GENERAL PROCUREMENT REFORM QUESTIONS

1. Why is the state expanding exemptions in the Arizona Procurement Code? Doesn't that mean less competition and increased costs?

No, the expanded exemptions do not necessarily imply less competition and increased costs for the products and services identified. These procurements do not have competition available. In today's environment, the procurement officer must write a written statement detailing why competition is not available for these specific products and services each time they are purchased.

2. Why are you expanding procurement authority within the Arizona Department of Administration (ADOA)?

Over the past few years, there have been recommendations from several sources regarding a lack of consistency in application and message regarding public procurement among state agencies. By reintroducing the compliance program, mandatory procurement training/certification program, and transfer of agency chief procurement officers to ADOA, these issues can be addressed to enhance policy implementation as well as support overall consistent management of the procurement process at a statewide level.

3. Is training and outreach going to require more staff? Can it be privatized?

The plan is to outsource training and outreach components through contracting opportunities. Staff resources will be required to oversee the contracts.

4. Why are you adapting the written determinations? Won't that mean less transparency?

There are many determinations in place within the Arizona Procurement Code, and the majority will not be affected. The determinations being addressed are mostly administrative and add time to the process. Their removal does not eliminate or reduce the procurement officer's responsibility to make sound business decisions when conducting solicitations.

5. Why raise the informal bid limit to \$100,000? Doesn't that mean less competition?

Not at all. All purchases above the small dollar limit require competition—that's currently set at \$5,000. Raising the informal bid limit increases quote opportunities with small businesses, while reducing the time to conduct the procurements.

6. I'm still not sure why the change to cooperative purchases? Can you explain?

Although we are required to aggregate our purchases, there are several unique products and services that an agency needs that add up to a low dollar amount. The state just doesn't have the volume that other local governments may have for that purchase. By expanding the ability for state agencies to utilize contracts solicited by other public entities and cooperatives, the state can realize a greater savings for that unique product or service. Limitations will be placed on the utilization of these contracts through the rulemaking process.

Also, the proposed changes would allow all 501(c)(3) companies to utilize statewide contracts. The State Procurement Office has been approached by several nonprofit associations that support the idea of their members receiving better pricing for their common products and services, because their members do not have the buying power to receive the level of discounts the state receives.

7. Will there be rules guiding cooperative purchasing?

Yes. The rules will be developed through stakeholder discussions and codified through the standard Governor's Regulatory Review Council rule process.

8. Will striking the language surrounding competitive sealed bidding (41-2534) eliminate the state's ability to use competition impracticable justifications?

No. Competition impracticable is still allowable under the emergency procurement statute (41-2537).

9. How much money does the state spend annually on procurements?

In FY12, the state spent approximately \$3.3 million for purchases that are procured under the procurement code.

10. How many protests and appeals to protests does the state handle annually?

In FY12, out of the 591 solicitations issued, the state received 41 protests of which 18 appeals to protests were received.

11. Can state employees who serve in a significant procurement role have a financial interest in a firm responding to a solicitation?

No. In an effort to promote greater transparency, HB2599 will require employees to disclose any financial interest he/she may have in a company responding to a state procurement solicitation. In addition, HB2599 will prevent an employee from serving in a significant procurement role if he/she in the past year worked for a firm responding to a solicitation.

12. Why does the bill include a timeframe within which the ADOA director must make a decision on an appeal? What is the exact timeframe?

The state has an interest in promoting efficiency and integrity in the administrative process. The proposed timeframe will ensure that both vendors, taxpayers, and the state can avoid protracted appeals. HB2599 will require the ADOA director to make a decision on an appeal within six weeks (42 calendar days). The director may also be granted an additional two weeks (14 calendar days) before the matter would be referred to hearing.

13. Would requiring an agency chief procurement officer to be an employee of the ADOA State Procurement Office be unconstitutional based on principles articulated in *R.L. Augustine Const. Co., Inc. v. Peoria Unified School Dist. No. 11, 936 P.2d 554 (1997)*?

No. The concerns expressed in *R.L. Augustine* will not be present if the agency chief procurement officers (CPOs) are employees of the ADOA State Procurement Office because the solicitation protest and contract controversy rules adopted by the ADOA director remain consistent with the two-tiered administrative decision and judicial review process articulated by the Arizona Supreme Court in that case. Consistent with the holding of that case, the purchasing agency CPO responds to protests with independent legal counsel from the Office of the Attorney General. The ADOA director (not the purchasing agency) remains the final decision maker and the final agency decision is subject to judicial review based on the administrative proceeding, and does not require the aggrieved party to bring a de novo action in superior court.

14. Why is the State interested in evaluating vendor performance?

HB2599 would grant rulemaking authority to establish vendor performance and evaluation standards. This information will be useful in guiding future procurement decisions while simultaneously protecting state and taxpayer interests.

15. How will vendor performance be evaluated?

The program approach and specific details will be discussed during stakeholder meetings and codified through the standard Governor's Regulatory Review Council rules process.

16. Why is the bill removing the requirement to weight bid criteria (41-2533)?

In today's environment, an invitation for bid involves products and services that must meet (or exceed) certain specifications. After a product or service has met the minimum requirements i.e., delivery, specifications, warranty, etc., the bid is awarded to the vendor with the lowest price. In contrast to an invitation for bid, a request for proposal is a solicitation method where criteria and weighting of the criteria are used in the evaluation process.

17. Under the competitive sealed proposal provision (41-2534), why the change from "competitive range" to "reasonably susceptible to being selected for award?"

Changing the "competitive range" reference aligns the state's statute with the Model Procurement Code, as well as being the terminology most familiar in public procurement.

LOBBYING PROVISION

18. With the expanded definition of lobbying including the attempt to influence procurements, how will lobbyists know about the new requirements and that they must register with the Secretary of State?

The Secretary of State's Office will post information regarding the registration of procurement lobbying on its website. In addition, it is the intent of Procurement Reform to provide outreach and education to currently registered lobbyists. Additional outreach to the vendor community and training of state procurement officers will also act as a mutually reinforcing educational tool within the procurement community.

19. Will this legislation require sales and marketing individuals to register as lobbyists if they wish to pitch their company's products and services to state agencies?

No. This bill is inherently about good governance and transparency. Registration and client disclosure will only be required for individuals who meet the prerequisite of participating in, or working for someone who participates in, legislative lobbying. If a sales and marketing employee is not paid by a lobbyist and is not in some other way connected with a lobbying company, he or she would be exempt from registration.

20. Will this bill create an uneven playing field by giving an advantage to a procurement specialist consultant?

No. Consultants without ties to the legislature most likely don't have the same level of influence, connections, or tactics of a legislative lobbyist who also does procurement lobbying.

21. How many other states have a procurement lobbying provision?

Approximately 25 states have a procurement lobbying provision; however, each state has done this in varying ways. Those states include Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Texas, Alabama, Idaho, Kansas, New Hampshire, North Carolina, Pennsylvania, and Tennessee.

22. Will the proposed law create an administrative burden on lobbying companies?

While it is possible that the proposed law could increase the administrative tasks for some lobbying groups, other groups are already registering their procurement clients. In addition, it is in the public's interest to implement reforms that promote best practices in governance and transparency.

NO HIRE PROVISION

23. How will vendors know when the time period begins that they cannot solicit state employees for employment?

ADOA will post the time period on the SPO website. The posting will include the date the first non-disclosure statement is signed pertaining to a particular solicitation, or request of a sole source or competition impracticable procurement.

24. How will state employees and the vendor community become aware of the new requirements under the proposed legislation?

ADOA will provide perpetual and ongoing training to state procurement officers who will in turn educate their agency staff. In addition, ADOA will provide outreach to the vendor community through various means.

25. How will the prohibition for soliciting employment be handled when contracting for the privatization of state operations?

Any solicitation for privatization will clearly identify the requirements for the potential hiring of state employees. Usually, state employees with a significant procurement role are not the same employees who are impacted by privatization and potential hiring. Additionally, the director may make a written determination that this provision does not apply.

26. If there is a dispute in the future regarding the hiring provision, who will monitor the timing of the procurement process?

Vendors and state employee supervisors who suspect noncompliance on the part of a state employee should report the wrongdoing to the State Procurement Office which will notify the Attorney General and/or human resources department, where applicable. Employees who suspect wrongdoing on the part of a vendor or other state employees should report the wrongdoing to their agency management who should in turn report to the State Procurement Office.

27. How far reaching is the no hire provision? Will it extend to someone who moves out-of-state?

Many of our vendors are out-of-state vendors who wish to conduct business with the State of Arizona. The hiring provision would apply.

28. What happens if a solicitation is cancelled? Will employees and vendors be in limbo in perpetuity?

Employees will have an opportunity to submit a request to the director to determine if the one-year exclusion is applicable for cancelled solicitations, sole source procurements and competition impracticable purchases.

29. Do individuals providing advice about financing or paying for a procurement need to register as a lobbyist?

No, they do not need to register as a lobbyist unless they are otherwise required to do so under State statute.

PROCUREAZ QUESTIONS

30. What is ProcureAZ and how does it work?

ProcureAZ is the State of Arizona's online procurement portal. The system functions as an up-to-date vendor bidders list as well as a proactive notification tool. All formal solicitations are advertised electronically through ProcureAZ and registered vendors are notified via email of procurement opportunities. Unregistered vendors are also able to view a list of open solicitations through ProcureAZ.

31. When does ProcureAZ notify vendors of pending procurement solicitations?

ProcureAZ notifies vendors of pending procurement solicitations when the solicitation is published, which is two weeks or more before a bid opening.

32. Is there currently any marketing of the ProcureAZ system?

The State Procurement Office currently markets ProcureAZ on the ADOA homepage. In addition, the State Procurement Office regularly attends tradeshow in which they provide educational material regarding the ProcureAZ system. Moreover, as part of the overall Procurement Reform plan, the State Procurement Office is hosting a series of vendor fairs, educational webinars, and other relevant training and outreach activities.

33. How many vendors are registered on ProcureAZ?

Approximately 29,832 vendors are currently registered on ProcureAZ.

34. How old is the ProcureAZ system?

ProcureAZ was implemented in August 2009.

35. Have there been any issues or flaws with ProcureAZ?

There have not been any overall system issues or flaws with the application. As with any new electronic system, however, there have been varying degrees of end-user misunderstanding and lack of knowledge. These issues have been addressed with business process assistance as well as additional and on-going end-user training and marketing.

36. Do all state agencies use ProcureAZ?

All agencies authorized to conduct formal solicitations are using ProcureAZ for procurements, including the largest agencies (ADOA, ADOT, DES, and AHCCCS). Most agencies are also using the system for purchase order and invoice processing – a few examples include DHS, Revenue, DPS, DOC, Game & Fish, and DEQ.