
From: spo
Sent: Tuesday, February 12, 2013 11:17 AM
To: spo
Subject: SPO ALERT: House Bill 2599 Procurement Reform
Attachments: HB2599 02112013.pdf; Procurement Reform 02062013.pptx

Importance: High

SPO Alert

Date: February 12, 2013
To: State Agency Chief Procurement Officers and Cooperative Program Members
From: Jean A. Clark, State Procurement Administrator
Re: House Bill 2599 Procurement Reform

House Bill 2599 (procurement reform) was introduced yesterday by Representative Pierce, in the Arizona House of Representatives.

Attached for your information is a copy of HB 2599 and a PowerPoint presentation on the proposed legislation.

If you have any questions, please feel free to contact me. Thank you.

Jean A. Clark, FNIGP, CPPO, CPPB, C.P.M
State Procurement Administrator
Department of Administration
100 N. 15th Avenue, Suite 201
Phoenix, Arizona 85007

Phone: 602-542-9136
Fax: 602-542-5511

SPO ALERTS are available
online at <http://spo.az.gov>

REFERENCE TITLE: **procurement code; amendments**

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2599

Introduced by
Representatives Pierce J, Forese: Olson

AN ACT

AMENDING SECTIONS 5-559, 41-741, 41-753, 41-1231, 41-1232.04, 41-1232.08, 41-1233, 41-1233.01, 41-2501, 41-2503, 41-2511, 41-2512, 41-2515 AND 41-2516, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 23, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2517; AMENDING SECTIONS 41-2532, 41-2533, 41-2534, 41-2535 AND 41-2544; REPEALING SECTIONS 41-2545 AND 41-2553, ARIZONA REVISED STATUTES; AMENDING SECTIONS 41-2567, 41-2612, 41-2631, 41-2632, 41-3504 AND 41-3521, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA PROCUREMENT CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 5-559, Arizona Revised Statutes, is amended to
3 read:
4 5-559. Contracts; limitation; restrictions
5 A. Notwithstanding any other statute, the director may:
6 1. Directly solicit bids and contract for the design and operation of
7 the lottery or the purchase of lottery equipment, tickets and related
8 materials.
9 2. Contract to effectuate the purposes of this chapter and the rules
10 ~~promulgated~~ ADOPTED pursuant to this chapter.
11 3. Acquire administrative office facilities and related facilities and
12 equipment for the use of the commission by lease, purchase or lease-purchase.
13 B. Procurement pursuant to this section shall be performed as
14 prescribed in section 41-2501, subsection ~~F~~ G. Bids received under this
15 section may be deemed confidential in whole or in part by the director if
16 required on account of the sensitive and responsible nature of the
17 commission's functions and the paramount considerations of security and
18 integrity.
19 C. Any award made by the director pursuant to this section becomes
20 effective and binding on the commission unless it is rejected by the
21 commission at a meeting held within fourteen calendar days after the award is
22 communicated to the members of the commission.
23 D. A contract awarded or entered into by the director pursuant to this
24 section shall not be assigned by the holder except by specific approval of
25 the director. In all awards of contracts pursuant to this section, the
26 director shall take particular account of the sensitive and responsible
27 nature of the commission's functions and the paramount considerations of
28 security and integrity.
29 Sec. 2. Section 41-741, Arizona Revised Statutes, is amended to read:
30 41-741. Definitions
31 In this article and articles 5 and 6 OF THIS CHAPTER, unless the
32 context otherwise requires:
33 1. "Appointing authority" means the person or group of persons
34 authorized by law or delegated authority to make appointments to fill
35 positions.
36 2. "At will" means an employment relationship where either party to
37 the relationship may sever the relationship at any time for any reason other
38 than an unlawful reason.
39 3. "Break in service" means a separation from state employment,
40 regardless of the reason for separation.
41 4. "Change in assignment" means movement of an employee to a different
42 position in the same state agency or another state agency.
43 5. "Covered employee" means an employee who:

1 (a) Before September 29, 2012, is in the state service, is not
2 uncovered pursuant to section 41-742, subsection A and has remained in
3 covered status without a break in service since that date.

4 (b) Before September 29, 2012, is in the state service, is employed as
5 a correctional officer I, correctional officer II, correctional officer III
6 or community corrections officer and has remained in covered status without a
7 break in service since that date.

8 (c) Before September 29, 2012, is in the state service, is a full
9 authority peace officer as certified by the Arizona peace officer standards
10 and training board and has remained in that status without a break in service
11 since that date.

12 (d) On or after September 29, 2012, is a correctional officer I,
13 correctional officer II, correctional officer III or community corrections
14 officer and is appointed to a position in the covered service, but does not
15 include a position in any other class in the correctional officer class
16 series or the community correctional officer class series or in any other
17 correctional class series.

18 (e) On or after September 29, 2012, is a full authority peace officer
19 as certified by the Arizona peace officer standards and training board and is
20 appointed to a position that requires such a certification in the covered
21 service.

22 6. "Covered service" means that employment status conferring rights of
23 appeal as prescribed in sections 41-782 and 41-783 or [SECTION 41-1830.16](#), as
24 applicable.

25 7. "Director" means the director of the department of administration,
26 or the director's designee, who is responsible for administering the state
27 personnel system pursuant to applicable state and federal laws.

28 8. "Employee" means all officers and employees of this state, whether
29 in covered service or uncovered service, unless otherwise prescribed.

30 9. "Full authority peace officer" means a peace officer whose
31 authority to enforce the laws of this state is not limited by the rules
32 adopted by the Arizona peace officer standards and training board.

33 10. "Original probationary period" means the specified period following
34 initial appointment to covered service.

35 11. "Probationary period" means a working test period of employment in
36 a covered service position for evaluation of the employee's work.

37 12. "Promotional probation" means the specified period of employment
38 following promotion of a permanent status employee to another covered service
39 position that has a higher pay grade.

40 13. "Rules" means rules adopted by the department of administration,
41 human resources division.

42 14. "SIGNIFICANT PROCUREMENT ROLE" MEANS ANY ROLE THAT INCLUDES ANY OF
43 THE FOLLOWING DUTIES:

44 (a) PARTICIPATING IN THE DEVELOPMENT OF A PROCUREMENT AS DEFINED IN
45 [SECTION 41-2503](#).

- 1 (b) PARTICIPATING IN THE DEVELOPMENT OF AN EVALUATION TOOL.
- 2 (c) APPROVING A PROCUREMENT AS DEFINED IN SECTION 41-2503 OR AN
- 3 EVALUATION TOOL.
- 4 (d) SOLICITING QUOTES GREATER THAN TEN THOUSAND DOLLARS FOR THE
- 5 PROVISION OF MATERIALS, SERVICES OR CONSTRUCTION.
- 6 (e) SERVING AS A TECHNICAL ADVISOR OR AN EVALUATOR WHO EVALUATES A
- 7 PROCUREMENT AS DEFINED IN SECTION 41-2503.
- 8 (f) RECOMMENDING OR SELECTING A VENDOR THAT WILL PROVIDE MATERIALS,
- 9 SERVICES OR CONSTRUCTION TO THIS STATE.
- 10 (g) SERVING AS A DECISION MAKER OR DESIGNEE ON A PROTEST OR AN APPEAL
- 11 BY A PARTY REGARDING AN AGENCY PROCUREMENT SELECTION OR DECISION.
- 12 ~~14.~~ 15. "State agency" means a department, board, office, authority,
- 13 commission or other governmental budget unit of this state and includes an
- 14 agency assigned to a department for administrative purposes. State agency
- 15 does not include the legislative and judicial branches, the Arizona board of
- 16 regents, state universities, the Arizona state schools for the deaf and the
- 17 blind, the department of public safety, the Arizona peace officer standards
- 18 and training board, the cotton research and protection council or public
- 19 corporations.
- 20 ~~15.~~ 16. "State personnel board" means the board established by section
- 21 41-781.
- 22 ~~16.~~ 17. "State personnel system" means all state agencies and
- 23 employees of those agencies that are not exempted by this article.
- 24 ~~17.~~ 18. "State service" means all offices and positions of employment
- 25 in state government that, before September 29, 2012, were subject to the
- 26 provisions of articles 5 and 6 of this chapter that were in effect before
- 27 September 29, 2012.
- 28 ~~18.~~ 19. "Supervisor" means a state employee who has one or more other
- 29 state employees reporting directly to the person and, for those state
- 30 employees, typically has the authority to:
 - 31 (a) Approve sick or annual leave.
 - 32 (b) Recommend hiring, discipline or dismissal.
 - 33 (c) Assign or schedule daily work.
 - 34 (d) Complete a performance evaluation.
- 35 ~~19.~~ 20. "Uncovered employee" means an employee in uncovered service.
- 36 ~~20.~~ 21. "Uncovered service" means employment at will and includes all
- 37 state employees except those in covered service.
- 38 Sec. 3. Section 41-753, Arizona Revised Statutes, is amended to read:
- 39 41-753. Unlawful acts; violation; classification
- 40 A. A person shall not make any false statement, certificate, mark,
- 41 rating or report with regard to any test, certification or appointment made
- 42 under this article or in any manner commit any fraud preventing the impartial
- 43 execution of this article or rules adopted under this article.

1 B. A person shall not, directly or indirectly, give, render, pay,
2 offer, solicit or accept any money, service or other valuable consideration
3 for or on account of any appointment, proposed appointment, promotion or
4 proposed promotion to, or any advantage in, a position in the state personnel
5 system.

6 C. An employee of any state agency, examiner or other person shall not
7 obstruct any person in the person's right to examination, eligibility,
8 certification or appointment under this article, or furnish to any person any
9 special or secret information for the purpose of affecting the rights or
10 prospects of any person with respect to employment in the state personnel
11 system.

12 D. AN EMPLOYEE OF ANY AGENCY AS DEFINED IN SECTION 41-1001, INCLUDING
13 THE OFFICE OF THE GOVERNOR, WHO HAS A SIGNIFICANT ROLE IN THE PROCUREMENT OF
14 MATERIALS, SERVICES OR CONSTRUCTION SHALL NOT ACCEPT AN OFFER OF EMPLOYMENT
15 FROM OR HAVE EMPLOYMENT DISCUSSIONS WITH ANY PERSON OR ENTITY LOBBYING FOR OR
16 RESPONDING TO A SOLICITATION DURING A PERIOD BEGINNING SIX MONTHS BEFORE THE
17 ESTIMATED ISSUANCE DATE OF A SOLICITATION, SOLE SOURCE PROCUREMENT OR
18 COMPETITION IMPRACTICABLE PROCUREMENT AND ENDING ONE YEAR THEREAFTER.
19 EMPLOYEES MAY INQUIRE WITH THE AGENCY FOR A DETERMINATION OF THE ESTIMATED
20 ISSUANCE DATE.

21 ~~D.~~ E. Any person who knowingly violates subsection A, B, ~~or~~ C OR D of
22 this section is guilty of a class 2 misdemeanor.

23 ~~E.~~ F. An elected or appointed official shall not with corrupt intent
24 use the official's political influence or position to cause the firing,
25 promotion or demotion of any public employee or the hiring of or failure to
26 hire any applicant for public employment.

27 ~~F.~~ G. An elected or appointed official who knowingly and with corrupt
28 intent violates subsection ~~E~~ F of this section is guilty of a class 2
29 misdemeanor.

30 ~~G.~~ H. Any person who is convicted of a class 2 misdemeanor under this
31 article, for a period of five years, is ineligible for appointment to or
32 employment in a position in the state personnel system and, if the person is
33 an employee of this state at the time of conviction, is subject to suspension
34 for not less than ninety days or dismissal.

35 ~~H.~~ I. A contact by an elected or appointed official with a public
36 agency regarding the qualifications of an applicant shall not be construed as
37 illegally using political influence or position.

38 Sec. 4. Section 41-1231, Arizona Revised Statutes, is amended to read:
39 41-1231. Definitions

40 In this article, unless the context otherwise requires:

41 1. "Authorized lobbyist" means any person, other than a designated
42 lobbyist or lobbyist for compensation, who is employed by, retained by or
43 representing a principal with or without compensation for the purpose of
44 lobbying and who is listed as an authorized lobbyist by the principal in its
45 registration pursuant to section 41-1232.

1 2. "Authorized public lobbyist" means a person, other than a
2 designated public lobbyist, who is employed by, retained by or representing a
3 public body, with or without compensation, for the purpose of lobbying and
4 who is listed as an authorized public lobbyist by the public body in its
5 registration pursuant to section 41-1232.01.

6 3. "Designated lobbyist" means the person who is designated by a
7 principal as the single point of contact for the principal and who is listed
8 as the designated lobbyist by the principal in its registration pursuant to
9 section 41-1232.

10 4. "Designated public lobbyist" means the person who is designated by
11 a public body as the single point of contact for the public body and who is
12 listed as the designated public lobbyist by the public body in its
13 registration pursuant to section 41-1232.01.

14 5. "Entertainment" means the amount of any expenditure paid or
15 incurred for admission to any sporting or cultural event or for participation
16 in any sporting or cultural activity.

17 6. "Expenditure" means a payment, distribution, loan, advance, deposit
18 or gift of money or anything of value and includes a contract, promise or
19 agreement, whether or not legally enforceable, to make an expenditure that
20 provides a benefit to an individual state officer or state employee and that
21 is incurred by or on behalf of one or more principals, public bodies,
22 lobbyists, designated public lobbyists or authorized public lobbyists.

23 7. "Family gift" means a gift to a state officer or employee or a
24 member of the officer's or employee's household from a principal, lobbyist,
25 designated public lobbyist or authorized public lobbyist who is a relative of
26 the state officer or employee or a member of the household of the state
27 officer or employee if the donor is not acting as the agent or intermediary
28 for someone other than a person covered by this paragraph.

29 8. "Food or beverage" means the amount of any expenditure paid or
30 incurred for food or beverages for a state officer or employee provided at a
31 location at which the principal, public body, lobbyist, designated public
32 lobbyist or authorized public lobbyist who made the expenditure is present.

33 9. "Gift" means a payment, distribution, expenditure, advance, deposit
34 or donation of money, any intangible personal property or any kind of
35 tangible personal or real property. For THE purposes of this article, gift
36 does not include:

37 (a) A gift, devise or inheritance from an individual's spouse, child,
38 parent, grandparent, grandchild, brother, sister, parent-in-law,
39 brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or
40 the spouse of any such individual if the donor is not acting as the agent or
41 intermediary for someone other than a person covered by this subdivision.

42 (b) Expenditures ~~which~~ THAT are either properly reported or exempt
43 from reporting under this chapter for:

44 (i) A speaking engagement.

45 (ii) Food or beverages.

- 1 (iii) Travel and lodging.
2 (iv) Flowers.
3 (c) Salary, compensation or employer reimbursed expenses lawfully paid
4 to a public official.
5 (d) The value, cost or price of professional or consulting services
6 that are not rendered to obtain a benefit for any registered principal,
7 public body, lobbyist, designated public lobbyist or authorized public
8 lobbyist or the clients of a principal or lobbyist.
9 (e) Expenses relating to a special event or function to which all
10 members of the legislature, either house of the legislature or any committee
11 of the legislature are invited.
12 (f) A plaque or other form of recognition similar to a plaque to a
13 state officer or state employee to signify the honorary recognition of a
14 service or other notable accomplishment.
15 (g) Informational material such as books, reports, pamphlets,
16 calendars or periodicals.
17 (h) An item that is not used and that is returned within fifteen days
18 of receipt to the donor or that is delivered within fifteen days of receipt
19 to a charitable organization and that is not claimed as a charitable
20 contribution for state or federal income tax purposes.
21 (i) A campaign contribution that is properly received and reported as
22 required by law.
23 (j) An item that is given to a state officer or employee if the state
24 officer or employee gives an item of approximately the same value to the
25 giver of the item at the same time that the item is given or on a similar
26 occasion as the one that prompted the original item to be given.
27 (k) Gifts of a personal nature that were customarily received by an
28 individual from the donor before the individual became a state officer or
29 employee.
30 (l) An item that is given to the general public at an event.
31 10. "Legislation" means bills, resolutions, memorials, amendments,
32 nominations and other matters that are pending or proposed in either house of
33 the legislature of this state or for the purposes of bonding ~~lobbying for~~ any
34 matter pending or proposed before a school district governing board.
35 11. "Lobbying" means attempting to influence the passage or defeat of
36 any legislation by directly communicating with any legislator, or in the case
37 of bonding, lobbyists directly communicating with any school district
38 employee or a school district governing board member or attempting to
39 influence any formal rule making proceeding pursuant to chapter 6 of this
40 title or rule making proceedings that are exempt from chapter 6 of this title
41 by directly communicating with any state officer or employee. **LOBBYING**
42 **INCLUDES ATTEMPTING TO INFLUENCE THE PROCUREMENT OF MATERIALS, SERVICES OR**
43 **CONSTRUCTION BY AN AGENCY AS DEFINED IN SECTION 41-1001, INCLUDING THE OFFICE**
44 **OF THE GOVERNOR.** Lobbying does not include:
45 (a) Interagency communications between state agency employees.

1 (b) Communications between a public official or employee of a public
2 body, designated public lobbyist or authorized public lobbyist and any state
3 officer, except for a member of the legislature, or an employee of the
4 legislature.

5 (c) Oral questions or comments made by a person to a state officer or
6 employee regarding a proposed rule and made in public at a meeting or
7 workshop that is open to the public and that is sponsored by a state agency,
8 board, commission, council or office.

9 (d) COMMUNICATIONS BETWEEN A PUBLIC BODY AND A SELF-EMPLOYED PERSON OR
10 PERSON EMPLOYED BY A PARTNERSHIP OR COMPANY REGARDING THE PROCUREMENT OF
11 MATERIALS, SERVICES OR CONSTRUCTION UNLESS THE SELF-EMPLOYED PERSON OR PERSON
12 EMPLOYED BY A PARTNERSHIP OR COMPANY IS OTHERWISE REQUIRED TO REGISTER
13 PURSUANT TO THIS ARTICLE OR IS EMPLOYED BY, SUPERVISED BY AT ANY LEVEL OR
14 CONTRACTED WITH A PERSON WHO IS OTHERWISE REQUIRED TO REGISTER PURSUANT TO
15 THIS ARTICLE.

16 12. "Lobbyist" means any person, other than a designated public
17 lobbyist or authorized public lobbyist, who is employed by, retained by or
18 representing a person other than himself, with or without compensation, for
19 the purpose of lobbying and who is listed as a lobbyist by the principal in
20 its registration pursuant to section 41-1232. Lobbyist includes a lobbyist
21 for compensation, designated lobbyist and authorized lobbyist. Lobbyist
22 includes attorneys whose practice involves bonding, underwriters of bonds and
23 investment bankers whose business includes bonding.

24 13. "Lobbyist for compensation" means a lobbyist who is compensated for
25 the primary purpose of lobbying on behalf of a principal and who is listed by
26 the principal in its registration pursuant to section 41-1232.

27 14. "Person" means an individual, partnership, committee, association
28 or corporation and any other organization or group of persons, except
29 legislators and political parties qualified for representation on the ballot
30 pursuant to section 16-801 or 16-804.

31 15. "Personal hospitality" means hospitality, meals, beverages,
32 transportation or lodging furnished but not commercially provided by a person
33 on property or facilities owned or possessed by the person or the person's
34 family.

35 16. "Principal" means any person, other than a public body, that
36 employs, retains, engages or uses, with or without compensation, a lobbyist.
37 Principal includes any subsidiary of a corporation.

38 17. "Public body" means the Arizona board of regents, a university
39 under the jurisdiction of the Arizona board of regents, the judicial
40 department, any state agency, board, commission or council, any county, any
41 county elected officer who elects to appoint a designated public lobbyist or
42 any city, town, district or other political subdivision of this state that
43 receives and ~~utilizes~~ USES tax revenues and that employs, retains, engages or
44 uses, with or without compensation, a designated public lobbyist or
45 authorized public lobbyist.

1 18. "Public official" means a person who is duly elected, appointed or
2 retained through election to an elected state, county or local office.

3 19. "Single expenditure" means an expenditure that provides a benefit
4 of more than twenty dollars to an individual state officer or state employee
5 and that is incurred by or on behalf of one or more principals, public
6 bodies, lobbyists, designated public lobbyists or authorized public
7 lobbyists.

8 20. "Speaking engagement":

9 (a) Means the amount of any expense paid or incurred for entrance fees,
10 lodging, food and beverage, entertainment, travel and other expenses for the
11 state officer's or employee's attendance at an event, committee, meeting,
12 conference or seminar, including meetings of state, regional or national
13 organizations or their committees concerned with legislative or governmental
14 activities if the state officer or employee participates in the event as a
15 speaker or panel participant by presenting information relating to the state
16 officer's or employee's legislative or official duties or by performing a
17 ceremonial function appropriate to the state officer's or employee's
18 position.

19 (b) Does not include expenditures for an honorarium or any other
20 similar fee paid to a speaker.

21 21. "State employee" means an employee of the legislature, a university
22 under the jurisdiction of the Arizona board of regents, the judicial
23 department or a state office, agency, board, commission or council.

24 22. "State officer" means a person who is duly elected, appointed or
25 retained through election to any state office, or a member of any state
26 board, commission or council, and includes a member of the legislature.

27 Sec. 5. Section 41-1232.04, Arizona Revised Statutes, is amended to
28 read:

29 41-1232.04. Registration: exceptions

30 Sections 41-1232, 41-1232.01, 41-1232.02 and 41-1232.03 do not apply to
31 a person if that person is acting in the following capacity:

32 1. A natural person who merely appears for himself before a committee
33 of the legislature or before a state officer or employee or a state agency,
34 board, commission or council to lobby in support of or in opposition to
35 legislation or official action.

36 2. A natural person who, acting in his own behalf, sends a letter to,
37 converses on the telephone with or has a personal conversation with a state
38 officer or employee for the purpose of supporting or opposing any legislation
39 or official action.

40 3. A duly elected or retained public official, judge or justice, a
41 person duly appointed to an elective public office, or an appointed member of
42 a state, county or local board, advisory committee, commission or council
43 acting in his official capacity on matters pertaining to his office, board,
44 advisory committee, commission or council.

1 corporation commission, a county board of supervisors, a city or town
2 governing body or a school district governing board shall not accept an
3 expenditure or single expenditure for entertainment from a person who for
4 compensation attempts to influence THE PROCUREMENT OF MATERIALS, SERVICES OR
5 CONSTRUCTION BY AN AGENCY AS DEFINED IN SECTION 41-1001, INCLUDING THE OFFICE
6 OF THE GOVERNOR, OR the passage or defeat of legislation, ordinances, rules,
7 regulations, nominations and other matters that are pending or proposed or
8 that are subject to formal approval by the corporation commission, a county
9 board of supervisors, a city or town governing body or a school district
10 governing board.

11 C. This section shall not apply to:

12 1. Entertainment in connection with a special event properly reported
13 pursuant to this article.

14 2. Entertainment that is incidental to a speaking engagement.

15 3. The following persons while attending or participating in any
16 sporting or cultural event or activity, sponsored by the board, district or
17 institution, in a facility that is owned or operated by the board, district
18 or institution:

19 (a) Employees of a school district governing board.

20 (b) Employees of a community college district governing board.

21 (c) Employees of any institution under the jurisdiction of the Arizona
22 board of regents.

23 D. The provisions of this article that define special events for
24 legislators apply to special events for members of the Arizona board of
25 regents.

26 Sec. 7. Section 41-1233, Arizona Revised Statutes, is amended to read:
27 41-1233. Prohibited acts

28 No person shall:

29 1. Retain or employ another person to promote or oppose legislation
30 for compensation contingent in whole or in part ~~upon~~ ON the passage or defeat
31 of any legislation, or the approval or veto of any legislation by the
32 governor, and no person shall accept employment or render service for
33 compensation on a contingent basis.

34 2. Lobby the legislature for compensation within one year after the
35 person ceases to be a member of the senate or house of representatives.

36 3. In any manner improperly seek to influence the vote of any member
37 of the legislature through communication with that member's employer.

38 4. LOBBY THE PUBLIC BODY THAT EMPLOYED THE PERSON IN A CAPACITY HAVING
39 A SIGNIFICANT PROCUREMENT ROLE AS DEFINED IN SECTION 41-741 IN THE
40 PROCUREMENT OF MATERIALS, SERVICES OR CONSTRUCTION WITHIN ONE YEAR AFTER THE
41 PERSON CEASES TO BE EMPLOYED BY THE PUBLIC BODY.

1 Sec. 8. Section 41-1233.01, Arizona Revised Statutes, is amended to
2 read:

3 41-1233.01. Disclosure

4 A person who is registered pursuant to this article or who is a
5 designated lobbyist, lobbyist for compensation, authorized lobbyist,
6 designated public lobbyist or authorized public lobbyist shall disclose that
7 fact to:

8 1. Any legislator ~~he~~ **THE PERSON** is lobbying for the first time or ~~upon~~
9 **ON** any subsequent request of a legislator.

10 2. **ANY PUBLIC OFFICIAL OR EMPLOYEE OF A PUBLIC BODY THAT THE PERSON IS**
11 **LOBBYING FOR THE PROCUREMENT OF MATERIALS, SERVICES OR CONSTRUCTION.**

12 Sec. 9. Section 41-2501, Arizona Revised Statutes, is amended to read:

13 41-2501. Applicability

14 A. This chapter applies only to procurements initiated after January
15 1, 1985 unless the parties agree to its application to procurements initiated
16 before that date.

17 B. This chapter applies to every expenditure of public monies,
18 including federal assistance monies except as otherwise specified in section
19 41-2637, by this state, acting through a state governmental unit as defined
20 in this chapter, under any contract, except that this chapter does not apply
21 to either grants as defined in this chapter, or contracts between this state
22 and its political subdivisions or other governments, except as provided in
23 chapter 24 of this title and in article 10 of this chapter. This chapter
24 also applies to the disposal of state materials. This chapter and rules
25 adopted under this chapter do not prevent any state governmental unit or
26 political subdivision from complying with the terms of any grant, gift,
27 bequest or cooperative agreement.

28 C. All political subdivisions and other local public agencies of this
29 state may adopt all or any part of this chapter and the rules adopted
30 pursuant to this chapter.

31 D. **NOTWITHSTANDING ANY OTHER LAW, SECTION 41-2517 APPLIES TO ANY**
32 **AGENCY AS DEFINED IN SECTION 41-1001, INCLUDING THE OFFICE OF THE GOVERNOR.**

33 ~~D.~~ E. The Arizona board of regents and the legislative and judicial
34 branches of state government are not subject to this chapter except as
35 prescribed in subsection ~~E~~ F of this section.

36 ~~E.~~ F. The Arizona board of regents and the judicial branch shall
37 adopt rules prescribing procurement policies and procedures for themselves
38 and institutions under their jurisdiction. The rules must be substantially
39 equivalent to the policies and procedures prescribed in this chapter.

40 ~~F.~~ G. The Arizona state lottery commission is exempt from this
41 chapter for procurement relating to the design and operation of the lottery
42 or purchase of lottery equipment, tickets and related materials. The
43 executive director of the Arizona state lottery commission shall adopt rules
44 substantially equivalent to the policies and procedures in this chapter for
45 procurement relating to the design and operation of the lottery or purchase

1 of lottery equipment, tickets or related materials. All other procurement
2 shall be as prescribed by this chapter.

3 ~~G.~~ H. The Arizona health care cost containment system administration
4 is exempt from this chapter for provider contracts pursuant to section
5 36-2904, subsection A and contracts for goods and services, including program
6 contractor contracts pursuant to title 36, chapter 29, articles 2 and 3. All
7 other procurement, including contracts for the statewide administrator of the
8 program pursuant to section 36-2903, subsection B, shall be as prescribed by
9 this chapter.

10 ~~H.~~ I. Arizona industries for the blind is exempt from this chapter
11 for purchases of finished goods from members of national industries for the
12 blind and for purchases of raw materials for use in the manufacture of
13 products for sale pursuant to section 41-1972. All other procurement shall
14 be as prescribed by this chapter.

15 ~~I.~~ J. Arizona correctional industries is exempt from this chapter for
16 purchases of raw materials, components and supplies that are used in the
17 manufacture or production of goods or services for sale entered into pursuant
18 to section 41-1622. All other procurement shall be as prescribed by this
19 chapter.

20 ~~J.~~ K. The state transportation board and the director of the
21 department of transportation are exempt from this chapter other than section
22 41-2586 for the procurement of construction or reconstruction, including
23 engineering services, of transportation facilities or highway facilities and
24 any other services that are directly related to land titles, appraisals, real
25 property acquisition, relocation, property management or building facility
26 design and construction for highway development and that are required
27 pursuant to title 28, chapter 20.

28 ~~K.~~ L. The Arizona highways magazine is exempt from this chapter for
29 contracts for the production, promotion, distribution and sale of the
30 magazine and related products and for contracts for sole source creative
31 works entered into pursuant to section 28-7314, subsection A, paragraph 5.
32 All other procurement shall be as prescribed by this chapter.

33 ~~L.~~ M. The secretary of state is exempt from this chapter for
34 contracts entered into pursuant to section 41-1012 to publish and sell the
35 administrative code. All other procurement shall be as prescribed by this
36 chapter.

37 ~~M.~~ N. This chapter is not applicable to contracts for professional
38 witnesses if the purpose of such contracts is to provide for professional
39 services or testimony relating to an existing or probable judicial proceeding
40 in which this state is or may become a party or to contract for special
41 investigative services for law enforcement purposes.

42 ~~N.~~ O. The head of any state governmental unit, in relation to any
43 contract exempted by this section from this chapter, has the same authority
44 to adopt rules, procedures or policies as is delegated to the director
45 pursuant to this chapter.

1 ~~Q.~~ P. Agreements negotiated by legal counsel representing this state
2 in settlement of litigation or threatened litigation are exempt from this
3 chapter.

4 ~~P.~~ Q. This chapter is not applicable to contracts entered into by the
5 department of economic security:

6 1. With a provider licensed or certified by an agency of this state to
7 provide child day care services or with a provider of family foster care
8 pursuant to section 8-503 or 36-554.

9 2. With area agencies on aging created pursuant to the older Americans
10 act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001
11 through 3058ee).

12 3. For services pursuant to title 36, chapter 29, article 2.

13 4. With an eligible entity as defined by Public Law 105-285, section
14 673(1)(a)(i), as amended, for designated community services block grant
15 program monies and any other monies given to the eligible entity that
16 accomplishes the purpose of Public Law 105-285, section 672.

17 ~~Q.~~ R. The department of health services may not require that persons
18 with whom it contracts follow this chapter for the purposes of subcontracts
19 entered into for the provision of the following:

20 1. Mental health services pursuant to section 36-189, subsection B.

21 2. Services for the seriously mentally ill pursuant to title 36,
22 chapter 5, article 10.

23 3. Drug and alcohol services pursuant to section 36-141.

24 4. Domestic violence services pursuant to title 36, chapter 30,
25 article 1.

26 ~~R.~~ S. The department of health services is exempt from this chapter
27 for contracts for services of physicians at the Arizona state hospital.

28 ~~S.~~ T. Contracts for goods and services approved by the board of
29 trustees of the public safety personnel retirement system are exempt from
30 this chapter.

31 ~~T.~~ U. The Arizona department of agriculture is exempt from this
32 chapter with respect to contracts for private labor and equipment to effect
33 cotton or cotton stubble plow-up pursuant to rules adopted under title 3,
34 chapter 2, article 1. On or before September 1 of each year, the director of
35 the Arizona department of agriculture shall establish and announce costs for
36 each acre of cotton or cotton stubble to be abated by private contractors.

37 ~~U.~~ V. The Arizona state parks board is exempt from this chapter for
38 purchases of guest supplies and items for resale such as food, linens, gift
39 items, sundries, furniture, china, glassware and utensils for the facilities
40 located in the Tonto natural bridge state park.

41 ~~V.~~ W. The Arizona state parks board is exempt from this chapter for
42 the purchase, production, promotion, distribution and sale of publications,
43 souvenirs and sundry items obtained and produced for resale.

44 ~~W.~~ X. The Arizona state schools for the deaf and the blind are exempt
45 from this chapter **FOR THE PURCHASE OF TEXTBOOKS AND** when purchasing products

1 through a cooperative that is organized and operates in accordance with state
2 law if such products are not available on a statewide contract and are
3 related to the operation of the schools or are products for which special
4 discounts are offered for educational institutions.

5 ~~X.~~ Y. Expenditures of monies in the morale, welfare and recreational
6 fund established by section 26-153 are exempt from this chapter.

7 ~~Y.~~ Z. Notwithstanding section 41-2534, the director of the state
8 department of corrections may contract with local medical providers in
9 counties with a population of less than four hundred thousand persons
10 according to the most recent United States decennial census for the following
11 purposes:

12 1. To acquire hospital and professional medical services for inmates
13 who are incarcerated in state department of corrections facilities that are
14 located in those counties.

15 2. To ensure the availability of emergency medical services to inmates
16 in all counties by contracting with the closest medical facility that offers
17 emergency treatment and stabilization.

18 ~~Z.~~ AA. The department of environmental quality is exempt from this
19 chapter for contracting for procurements relating to the water quality
20 assurance revolving fund program established pursuant to title 49, chapter 2,
21 article 5. The department shall engage in a source selection process that is
22 similar to the procedures prescribed by this chapter. The department may
23 contract for remedial actions with a single selection process. The exclusive
24 remedy for disputes or claims relating to contracting pursuant to this
25 subsection is as prescribed by article 9 of this chapter and the rules
26 adopted pursuant to that article. All other procurement by the department
27 shall be as prescribed by this chapter.

28 ~~AA.~~ BB. The motor vehicle division of the department of
29 transportation is exempt from this chapter for third party authorizations
30 pursuant to title 28, chapter 13, only if all of the following conditions
31 exist:

32 1. The division does not pay any public monies to an authorized third
33 party.

34 2. Exclusivity is not granted to an authorized third party.

35 3. The director has complied with the requirements prescribed in title
36 28, chapter 13 in selecting an authorized third party.

37 ~~BB.~~ CC. This section does not exempt third party authorizations
38 pursuant to title 28, chapter 13 from any other applicable law.

39 ~~CC.~~ DD. The state forester is exempt from this chapter for purchases
40 and contracts relating to wild land fire suppression and pre-positioning
41 equipment resources and for other activities related to combating wild land
42 fires and other unplanned risk activities, including fire, flood, earthquake,
43 wind and hazardous material responses. All other procurement by the state
44 forester shall be as prescribed by this chapter.

1 ~~DD.~~ EE. The cotton research and protection council is exempt from
2 this chapter for procurements relating to its aflatoxin control program and
3 for contracts for research programs related to cotton production or
4 protection.

5 ~~EE.~~ FF. Expenditures of monies in the Arizona agricultural protection
6 fund established by section 3-3304 are exempt from this chapter.

7 ~~FF.~~ GG. The Arizona commerce authority is exempt from this chapter,
8 except article 10 for the purpose of cooperative purchases. The authority
9 shall adopt policies, procedures and practices, in consultation with the
10 department of administration, that are similar to and based on the policies
11 and procedures prescribed by this chapter for the purpose of increased public
12 confidence, fair and equitable treatment of all persons engaged in the
13 process and fostering broad competition while accomplishing flexibility to
14 achieve the authority's statutory requirements. The authority shall make its
15 policies, procedures and practices available to the public. The authority
16 may exempt specific expenditures from the policies, procedures and practices.

17 HH. THE ARIZONA EXPOSITION AND STATE FAIR BOARD IS EXEMPT FROM THIS
18 CHAPTER FOR CONTRACTS FOR PROFESSIONAL ENTERTAINMENT.

19 II. THIS CHAPTER DOES NOT APPLY TO THE PURCHASE OF WATER, GAS OR
20 ELECTRIC UTILITIES.

21 JJ. THIS CHAPTER DOES NOT APPLY TO PROFESSIONAL CERTIFICATIONS,
22 PROFESSIONAL MEMBERSHIPS AND CONFERENCE REGISTRATIONS.

23 Sec. 10. Section 41-2503, Arizona Revised Statutes, is amended to
24 read:

25 41-2503. Definitions

26 In this chapter, unless the context otherwise requires:

27 1. "Architect services" means those professional architect services
28 that are within the scope of architectural practice as provided in title 32,
29 chapter 1.

30 2. "Business" means any corporation, partnership, individual, sole
31 proprietorship, joint stock company, joint venture or other private legal
32 entity.

33 3. "Change order" means a written order ~~which~~ THAT is signed by a
34 procurement officer and ~~which~~ THAT directs the contractor to make changes
35 that the changes clause of the contract authorizes the procurement officer to
36 order.

37 4. "Construction":

38 (a) Means the process of building, altering, repairing, improving or
39 demolishing any public structure or building or other public improvements of
40 any kind to any public real property.

41 (b) Does not include:

42 (i) The routine operation, routine repair or routine maintenance of
43 existing facilities, structures, buildings or real property.

1 (ii) The investigation, characterization, restoration or remediation
2 due to an environmental issue of existing facilities, structures, buildings
3 or real property.

4 5. "Construction-manager-at-risk" means a project delivery method in
5 which:

6 (a) There is a separate contract for design services and a separate
7 contract for construction services, except that instead of a single contract
8 for construction services, the purchasing agency may elect separate contracts
9 for preconstruction services during the design phase, for construction during
10 the construction phase and for any other construction services.

11 (b) The contract for construction services may be entered into at the
12 same time as the contract for design services or at a later time.

13 (c) Design and construction of the project may be either:

14 (i) Sequential with the entire design complete before construction
15 commences.

16 (ii) Concurrent with the design produced in two or more phases and
17 construction of some phases commencing before the entire design is complete.

18 (d) Finance services, maintenance services, operations services,
19 preconstruction services and other related services may be included.

20 6. "Construction services" means either of the following for
21 construction-manager-at-risk, design-build and job-order-contracting project
22 delivery methods:

23 (a) Construction, excluding services, through the
24 construction-manager-at-risk or job-order-contracting project delivery
25 methods.

26 (b) A combination of construction and, as elected by the purchasing
27 agency, one or more related services, such as finance services, maintenance
28 services, operations services, design services and preconstruction services,
29 as those services are authorized in the definitions of
30 construction-manager-at-risk, design-build or job-order-contracting in this
31 section.

32 7. "Contract" means all types of state agreements, regardless of what
33 they may be called, for the procurement of materials, services, construction,
34 construction services or the disposal of materials.

35 8. "Contract modification" means any written alteration in the terms
36 and conditions of any contract accomplished by mutual action of the parties
37 to the contract.

38 9. "Contractor" means any person who has a contract with a state
39 governmental unit.

40 10. "Data" means documented information, regardless of form or
41 characteristic.

42 11. "Department" means the department of administration.

43 12. "Design-bid-build" means a project delivery method in which:

44 (a) There is a sequential award of two separate contracts.

45 (b) The first contract is for design services.

- 1 (c) The second contract is for construction.
2 (d) Design and construction of the project are in sequential phases.
3 (e) Finance services, maintenance services and operations services are
4 not included.
- 5 13. "Design-build" means a project delivery method in which:
6 (a) There is a single contract for design services and construction
7 services, except that instead of a single contract for design services and
8 construction services, the purchasing agency may elect separate contracts for
9 preconstruction services and design services during the design phase, for
10 construction and design services during the construction phase and for any
11 other construction services.
12 (b) Design and construction of the project may be either:
13 (i) Sequential with the entire design complete before construction
14 commences.
15 (ii) Concurrent with the design produced in two or more phases and
16 construction of some phases commencing before the entire design is complete.
17 (c) Finance services, maintenance services, operations services,
18 preconstruction services and other related services may be included.
- 19 14. "Design requirements":
20 (a) Means at a minimum the purchasing agency's written description of
21 the project or service to be procured, including:
22 (i) The required features, functions, characteristics, qualities and
23 properties.
24 (ii) The anticipated schedule, including start, duration and
25 completion.
26 (iii) The estimated budgets applicable to the specific procurement for
27 design and construction and, if applicable, for operation and maintenance.
28 (b) May include:
29 (i) Drawings and other documents illustrating the scale and
30 relationship of the features, functions and characteristics of the project,
31 which shall all be prepared by an architect or engineer, as appropriate, who
32 is registered pursuant to section 32-121.
33 (ii) Additional design information or documents that the purchasing
34 agency elects to include.
- 35 15. "Design services" means architect services, engineer services or
36 landscape architect services.
- 37 16. "Designee" means a duly authorized representative of the director.
38 17. "Director" means the director of the department of administration.
39 18. "Employee" means an individual drawing a salary from a state
40 governmental unit, whether elected or not, and any noncompensated individual
41 performing personal services for any state governmental unit.
42 19. "Engineer services" means those professional engineer services that
43 are within the scope of engineering practice as provided in title 32,
44 chapter 1.

- 1 20. "Finance services" means financing for a construction services
2 project.
- 3 21. "General services administration contract" means contracts awarded
4 by the United States government general services administration.
- 5 22. "Grant" means the furnishing of financial or other assistance,
6 including state funds or federal grant funds, by any state governmental unit
7 to any person for the purpose of supporting or stimulating educational,
8 cultural, social or economic quality of life.
- 9 23. "Job-order-contracting" means a project delivery method in which:
10 (a) The contract is a requirements contract for indefinite quantities
11 of construction.
- 12 (b) The construction to be performed is specified in job orders issued
13 during the contract.
- 14 (c) Finance services, maintenance services, operations services,
15 preconstruction services, design services and other related services may be
16 included.
- 17 24. "Landscape architect services" means those professional landscape
18 architect services that are within the scope of landscape architectural
19 practice as provided in title 32, chapter 1.
- 20 25. "Maintenance services" means routine maintenance, repair and
21 replacement of existing facilities, structures, buildings or real property.
- 22 26. "Materials":
23 (a) Means all property, including equipment, supplies, printing,
24 insurance and leases of property.
- 25 (b) Does not include land, a permanent interest in land or real
26 property or leasing space.
- 27 27. "Operations services" means routine operation of existing
28 facilities, structures, buildings or real property.
- 29 28. "Owner" means a state purchasing agency or state governmental unit.
- 30 29. "Person" means any corporation, business, individual, union,
31 committee, club, other organization or group of individuals.
- 32 30. "Preconstruction services" means services and other activities
33 during the design phase.
- 34 31. "Procurement":
35 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
36 any materials, services, construction or construction services.
- 37 (b) Includes all functions that pertain to obtaining any materials,
38 services, construction or construction services, including description of
39 requirements, selection and solicitation of sources, preparation and award of
40 contract, and all phases of contract administration.
- 41 32. "Procurement officer":
42 (a) Means any person duly authorized to enter into and administer
43 contracts and make written determinations with respect to the contracts.
- 44 (b) Includes an authorized representative acting within the limits of
45 the authorized representative's authority.

1 33. "Purchasing agency" means any state governmental unit ~~which~~ THAT is
2 authorized by this chapter or rules adopted pursuant to this chapter, or by
3 way of delegation from the director, to enter into contracts.

4 34. "Services":

5 (a) Means the furnishing of labor, time or effort by a contractor or
6 subcontractor ~~which~~ THAT does not involve the delivery of a specific end
7 product other than required reports and performance.

8 (b) Does not include employment agreements or collective bargaining
9 agreements.

10 35. "SIGNIFICANT PROCUREMENT ROLE" MEANS ANY ROLE THAT INCLUDES ANY OF
11 THE FOLLOWING DUTIES:

12 (a) PARTICIPATING IN THE DEVELOPMENT OF A PROCUREMENT.

13 (b) PARTICIPATING IN THE DEVELOPMENT OF AN EVALUATION TOOL.

14 (c) APPROVING A PROCUREMENT OR AN EVALUATION TOOL.

15 (d) SOLICITING QUOTES GREATER THAN TEN THOUSAND DOLLARS FOR THE
16 PROVISION OF MATERIALS, SERVICES OR CONSTRUCTION.

17 (e) SERVING AS A TECHNICAL ADVISOR OR AN EVALUATOR WHO EVALUATES A
18 PROCUREMENT.

19 (f) RECOMMENDING OR SELECTING A VENDOR THAT WILL PROVIDE MATERIALS,
20 SERVICES OR CONSTRUCTION TO THIS STATE.

21 (g) SERVING AS A DECISION MAKER OR DESIGNEE ON A PROTEST OR AN APPEAL
22 BY A PARTY REGARDING AN AGENCY PROCUREMENT SELECTION OR DECISION.

23 ~~35.~~ 36. "State governmental unit" means any department, commission,
24 council, board, bureau, committee, institution, agency, government
25 corporation or other establishment or official of the executive branch or
26 corporation commission of this state.

27 ~~36.~~ 37. "Subcontractor" means a person who contracts to perform work
28 or render service to a contractor or to another subcontractor as a part of a
29 contract with a state governmental unit.

30 ~~37.~~ 38. "Using agency" means any state governmental unit ~~which~~ THAT
31 USES utilizes any materials, services or construction procured under this
32 chapter.

33 Sec. 11. Section 41-2511, Arizona Revised Statutes, is amended to
34 read:

35 ~~41-2511.~~ Authority of the director

36 A. Except as otherwise provided in this chapter, the director may
37 adopt rules, consistent with this chapter, governing the procurement and
38 management of all materials, services and construction to be procured by this
39 state and the disposal of materials.

40 B. The director shall serve as the central procurement officer of this
41 state.

42 C. Except as otherwise provided in this chapter, the director shall,
43 in accordance with rules adopted under this chapter:

44 1. Procure or supervise the procurement of all materials, services and
45 construction needed by this state.

- 1 2. Establish guidelines for the management of all inventories of
2 materials belonging to this state.
- 3 3. Sell, trade or otherwise dispose of surplus materials belonging to
4 this state.
- 5 4. Establish and maintain programs for the inspection, testing and
6 acceptance of materials, services and construction.
- 7 5. ESTABLISH AND MAINTAIN PROGRAMS TO ENSURE PROCUREMENT COMPLIANCE
8 WITH THIS CHAPTER AND APPLICABLE RULES.
- 9 6. ESTABLISH AND MAINTAIN A MANDATORY PROCUREMENT TRAINING AND
10 CERTIFICATION PROGRAM TO ENSURE CONSISTENCY IN PROCUREMENT PRACTICES FOR
11 THOSE AUTHORIZED TO PERFORM PROCUREMENT FUNCTIONS UNDER THIS CHAPTER.
- 12 7. EMPLOY STAFF AS NECESSARY TO PERFORM THE DUTIES PRESCRIBED IN THIS
13 CHAPTER.
- 14 8. ESTABLISH PROCUREMENT OFFICES AS THE DIRECTOR DETERMINES NECESSARY
15 TO MAINTAIN AN EFFECTIVE AND EFFICIENT PROGRAM OF PROCUREMENT ADMINISTRATION.
- 16 9. PROVIDE CONSULTATION TO STATE AGENCY MANAGEMENT IN ALL ASPECTS OF
17 PROCUREMENT TO INCREASE EFFICIENCY AND ECONOMY IN STATE AGENCIES BY IMPROVING
18 THE METHODS OF PROCUREMENT WITH FULL RECOGNITION OF THE REQUIREMENTS AND
19 NEEDS OF MANAGEMENT.
- 20 10. ENTER INTO AGREEMENTS WITH ANY STATE GOVERNMENT UNIT OR POLITICAL
21 SUBDIVISION OF THIS STATE OR AGENCY OF A POLITICAL SUBDIVISION OF THIS STATE
22 TO FURNISH PROCUREMENT ADMINISTRATION SERVICES AND FACILITIES OF THE
23 DEPARTMENT. UNLESS MONIES HAVE BEEN APPROPRIATED BY THE LEGISLATURE FOR THIS
24 PURPOSE, ANY AGREEMENT SHALL PROVIDE FOR REIMBURSEMENT TO THIS STATE OF THE
25 ACTUAL COST OF THE SERVICES AND FACILITIES FURNISHED, AS DETERMINED BY THE
26 DIRECTOR.
- 27 11. ENTER INTO AGREEMENTS WITH THE ATTORNEY GENERAL FOR DEDICATED LEGAL
28 RESOURCES TO SUPPORT ANY STATE GOVERNMENTAL UNIT IN PROCUREMENT LEGAL
29 MATTERS, INCLUDING NEGOTIATIONS, PROTESTS AND APPEALS.
- 30 Sec. 12. Section 41-2512, Arizona Revised Statutes, is amended to
31 read:
- 32 41-2512. Delegation of authority or functions by the director
33 The director may delegate authority OR SPECIFIC PROCUREMENT FUNCTIONS
34 to any state governmental unit.
- 35 Sec. 13. Section 41-2515, Arizona Revised Statutes, is amended to
36 read:
- 37 41-2515. Collection of data concerning public procurement
38 All using agencies shall furnish such reports as the director may
39 require concerning usage, needs and stocks on hand, and the director may
40 prescribe forms AND PROCUREMENT SYSTEMS for use by the using agencies in
41 requisitioning, ordering and reporting of materials, services and
42 construction.

1 CONVICTION, IS SUBJECT TO SUSPENSION FOR NOT LESS THAN NINETY DAYS OR
2 DISMISSAL.

3 Sec. 16. Section 41-2532, Arizona Revised Statutes, is amended to
4 read:

5 41-2532. Methods of source selection

6 Unless otherwise authorized by law, all state contracts shall be
7 awarded by competitive sealed bidding as provided in section 41-2533, ~~except~~
8 OR as provided in sections 41-2534 through 41-2538 and sections ~~41-2553,~~
9 41-2554, 41-2558, 41-2559, 41-2572, 41-2578, 41-2579, 41-2581 and 41-2636.

10 Sec. 17. Section 41-2533, Arizona Revised Statutes, is amended to
11 read:

12 41-2533. Competitive sealed bidding

13 A. Contracts shall be awarded by competitive sealed bidding except as
14 otherwise provided in section 41-2532.

15 B. An invitation for bids shall be issued and shall include a purchase
16 description and all contractual terms and conditions applicable to the
17 procurement.

18 C. Adequate public notice of the invitation for bids shall be given a
19 reasonable time before the date set forth in the invitation for the opening
20 of bids, in accordance with rules adopted by the director. ~~The notice may~~
21 ~~include publication one or more times in a newspaper of general circulation a~~
22 ~~reasonable time before bid opening. If the invitation for bids is for the~~
23 ~~procurement of services other than those described in sections 41-2513,~~
24 ~~41-2578, 41-2579 and 41-2581, the notice shall include publication in a~~
25 ~~single newspaper or in multiple newspapers within this state. The~~
26 publication shall be not less than two weeks before bid opening. ~~and shall be~~
27 ~~circulated within the affected governmental jurisdiction. The notice may~~
28 ~~also be posted at a designated site on a worldwide public network of~~
29 ~~interconnected computers.~~

30 D. Bids shall be opened publicly at the time and place designated in
31 the invitation for bids. The amount of each bid, and such other relevant
32 information as may be specified by rule, together with the name of each
33 bidder shall be recorded. This record shall be open to public inspection at
34 the bid opening in a manner prescribed by rule. The bids shall not be open
35 for public inspection until after a contract is awarded. To the extent the
36 bidder designates and the state concurs, trade secrets or other proprietary
37 data contained in the bid documents shall remain confidential in accordance
38 with rules adopted by the director.

39 E. Bids shall be unconditionally accepted without alteration or
40 correction, except as authorized in this chapter. Bids shall be evaluated
41 based on the requirements set forth in the invitation for bids, including
42 criteria to determine acceptability such as inspection, testing, quality,
43 workmanship, delivery and suitability for a particular purpose, as prescribed
44 in rules adopted by the director. ~~The invitation for bids shall set forth~~
45 ~~the evaluation criteria to be used, including the weighting of identified~~

1 ~~criteria.~~ Evaluation criteria shall not be used for construction and no
2 criteria may be used in bid evaluation that are not set forth in the
3 invitation for bids.

4 F. The correction or withdrawal of erroneous bids before or after bid
5 opening, based on bid mistakes, may be permitted in accordance with rules
6 adopted by the director. After bid opening, no corrections in bid prices or
7 other provisions of bids prejudicial to the interest of this state or fair
8 competition shall be permitted. Except as otherwise provided by rule, all
9 decisions to permit the correction or withdrawal of bids, or to cancel awards
10 or contracts based on bid mistakes, shall be supported by a written
11 determination made by the director.

12 G. The contract shall be awarded to the lowest responsible and
13 responsive bidder whose bid conforms in all material respects to the
14 requirements and criteria set forth in the invitation for bids. The amount
15 of any applicable transaction privilege or use tax of a political subdivision
16 of this state is not a factor in determining the lowest bidder. If all bids
17 for a construction project exceed available monies as certified by the
18 appropriate fiscal officer, and the low responsive and responsible bid does
19 not exceed such monies by more than five per cent, the director may in
20 situations in which time or economic considerations preclude resolicitation
21 of work of a reduced scope negotiate an adjustment of the bid price,
22 including changes in the bid requirements, with the low responsive and
23 responsible bidder, to bring the bid within the amount of available monies.

24 H. The multistep sealed bidding method may be used if ~~the director~~
25 ~~determines in writing that~~ it is not practicable to initially prepare a
26 definitive purchase description ~~which~~ THAT is suitable to permit an award
27 based on competitive sealed bidding. An invitation for bids may be issued
28 requesting the submission of technical offers to be followed by an invitation
29 for bids limited to those bidders whose offers are determined to be
30 technically acceptable under the criteria set forth in the first
31 solicitation, except that the multistep sealed bidding method may not be used
32 for construction contracts.

33 I. If the price of a recycled paper product ~~which~~ THAT conforms to
34 specifications is within five per cent of a low bid product ~~which~~ THAT is not
35 recycled and the recycled product bidder is otherwise the lowest responsible
36 and responsive bidder, the award shall be made to the bidder offering the
37 recycled product. The director may adopt rules requiring a five per cent
38 preference for other products made from recycled materials.

39 Sec. 18. Section 41-2534, Arizona Revised Statutes, is amended to
40 read:

41 41-2534. Competitive sealed proposals

42 A. ~~If, under rules adopted pursuant to this chapter, the director~~
43 ~~determines in writing that the use of competitive sealed bidding is either~~
44 ~~not practicable or not advantageous to this state,~~ A contract for materials
45 or services may be entered into by competitive sealed proposals. This

1 section does not apply to procurement of construction, construction services
2 or specified professional services pursuant to section 41-2537, 41-2578,
3 41-2579 or 41-2581. Construction services shall be procured pursuant to
4 section 41-2537, 41-2578 or 41-2579. ~~The director may provide by rule that~~
5 ~~it is either not practicable or not advantageous to this state to procure~~
6 ~~specified types of materials or services by competitive sealed bidding.~~

7 B. Proposals shall be solicited through a request for proposals.

8 C. Adequate public notice of the request for proposals shall be given
9 in the same manner as provided in section 41-2533.

10 D. Proposals shall be opened publicly at the time and place designated
11 in the request for proposals. The name of each offeror ~~and such other~~
12 ~~relevant information as is specified by rule~~ shall be ~~publicly read and~~
13 recorded in accordance with rules adopted by the director. All other
14 information contained in the proposals shall be confidential so as to avoid
15 disclosure of contents prejudicial to competing offerors during the process
16 of negotiation. The proposals shall be open for public inspection after
17 contract award. To the extent the offeror designates and the state concurs,
18 trade secrets or other proprietary data contained in the offer documents
19 shall remain confidential in accordance with rules adopted by the director.

20 E. The request for proposals shall state the relative importance of
21 price and other evaluation factors. Specific numerical weighting is not
22 required.

23 F. As provided in the request for proposals, and under rules adopted
24 by the director, discussions may be conducted with responsible offerors who
25 submit proposals determined to be reasonably susceptible to being selected
26 for award for the purpose of clarification to ensure full understanding of
27 the solicitation requirements and to permit revision of offers. Offerors
28 shall be accorded fair treatment with respect to any opportunity for
29 discussion. Revisions may be permitted after submission and before award.
30 If discussions are conducted, all offerors who have submitted proposals that
31 are determined by the procurement officer to be ~~in the competitive range~~
32 **REASONABLY SUSCEPTIBLE TO BEING SELECTED FOR AWARD** shall be invited to submit
33 a ~~final proposal revision~~ **BEST AND FINAL OFFER**. In conducting discussions,
34 there shall be no disclosure of any information derived from proposals
35 submitted by competing offerors.

36 G. The award shall be made to the responsible offeror whose proposal is
37 determined in writing to be the most advantageous to this state taking into
38 consideration the evaluation factors set forth in the request for proposals.
39 No other factors or criteria may be used in the evaluation. The amount of
40 any applicable transaction privilege or use tax of a political subdivision of
41 this state is not a factor in determining the most advantageous proposal.
42 The contract file shall contain the basis on which the award is made.

1 Sec. 19. Section 41-2535, Arizona Revised Statutes, is amended to
2 read:

3 41-2535. Procurements not exceeding a prescribed amount; small
4 businesses; simplified construction procurement
5 program

6 A. Any procurement ~~which~~ THAT does not exceed the aggregate dollar
7 amount of ~~fifty~~ ONE HUNDRED thousand dollars may be made in accordance with
8 rules adopted by the director, except that the procurements shall be made
9 with such competition as is practicable under the circumstances.

10 B. Any procurement ~~which~~ THAT does not exceed the aggregate dollar
11 amount of less than ~~fifty~~ ONE HUNDRED thousand dollars shall be restricted,
12 if practicable, to small businesses as defined in rules adopted by the
13 director. The procurement officer shall rotate the small business solicited
14 to compete for any procurement of less than ~~fifty~~ ONE HUNDRED thousand
15 dollars. If it is impracticable to restrict a particular procurement to
16 small businesses, the procurement officer shall make a determination setting
17 forth the reasons and place it in the contract file.

18 C. Procurement requirements shall not be artificially divided or
19 fragmented so as to constitute a purchase under this section and to
20 circumvent the source selection procedures required by section 41-2533 or
21 41-2534 or be artificially combined to circumvent this section.

22 D. A procurement involving construction not exceeding one hundred
23 thousand dollars may be made pursuant to rules adopted by the director in
24 accordance with this section ~~which~~ THAT shall be known as the simplified
25 construction procurement program. At a minimum the rules shall require that:

26 1. A list be maintained of persons who desire to receive solicitations
27 to bid on construction projects to which additions shall be permitted
28 throughout the year.

29 2. The list of persons be available for public inspection.

30 3. Agreements for construction be on forms approved by the director.

31 4. All information submitted by bidders pursuant to this section be
32 confidential according to section 41-2533, subsection D.

33 5. All bids for construction be opened at a public opening.

34 6. All persons desiring to submit bids be treated equitably and the
35 information related to each project be available to all eligible persons.

36 7. Competition for construction projects under the simplified
37 construction procurement program be encouraged to the maximum extent
38 possible.

39 Sec. 20. Section 41-2544, Arizona Revised Statutes, is amended to
40 read:

41 41-2544. Types of contracts

42 Subject to the limitations of this section, any type of contract ~~which~~
43 THAT will promote the best interests of this state may be used, except that
44 the use of a cost-plus-a-percentage-of-cost contract is prohibited. ~~A~~
45 ~~cost-reimbursement contract may be used only if a determination is made in~~

1 ~~writing that such contract is likely to be less costly to this state than any~~
2 ~~other type or that it is impracticable to obtain the materials, services or~~
3 ~~construction required except under such a contract.~~

4 Sec. 21. Repeal

5 Sections 41-2545 and 41-2553, Arizona Revised Statutes, are repealed.

6 Sec. 22. Section 41-2567, Arizona Revised Statutes, is amended to
7 read:

8 41-2567. Specifications for energy consumptive material

9 In conjunction with the ~~Arizona commerce authority~~ GOVERNOR'S OFFICE OF
10 ENERGY POLICY, the director shall establish specifications based on
11 considerations of energy conservation for the procurement of selected energy
12 consumptive material.

13 Sec. 23. Section 41-2612, Arizona Revised Statutes, is amended to
14 read:

15 41-2612. Subject of rules

16 The rules adopted by the director pursuant to section 41-2611 shall, ~~as~~
17 ~~a minimum,~~ address AT LEAST the following subjects:

- 18 1. Protested solicitations and awards.
- 19 2. **VENDOR PERFORMANCE AND EVALUATION OF PAST PERFORMANCE.**
- 20 ~~2-~~ 3. Suspension or debarment of contractors.
- 21 ~~3-~~ 4. Breach of contract controversies and contract claims.

22 Sec. 24. Section 41-2631, Arizona Revised Statutes, is amended to
23 read:

24 41-2631. Definitions

25 In this article, unless the context otherwise requires:

26 1. "Cooperative purchasing" means procurement conducted by, or on
27 behalf of, more than one public procurement unit.

28 2. **"EXTERNAL PROCUREMENT ACTIVITY" MEANS ANY BUYING ORGANIZATION NOT**
29 **LOCATED IN THIS STATE THAT WOULD QUALIFY AS A PUBLIC PROCUREMENT UNIT.**

30 ~~2-~~ 3. "Local public procurement unit" means any political
31 subdivision, any agency, board, department or other instrumentality of such
32 political subdivision and any nonprofit corporation created solely for the
33 purpose of administering a cooperative purchase under this article.

34 ~~3-~~ 4. ~~"Nonprofit educational or public health institution" means any~~
35 ~~educational or public health institution, no part of the income of which is~~
36 ~~distributable to its members, directors or officers,~~ **CORPORATION" MEANS ANY**
37 **NONPROFIT CORPORATION AS DESIGNATED BY THE INTERNAL REVENUE SERVICE UNDER**
38 **SECTION 501(c)(3) THROUGH 501(c)(6) as defined in rules adopted by the**
39 ~~director~~ and includes certified nonprofit agencies ~~for disabled individuals~~
40 **THAT SERVE INDIVIDUALS WITH DISABILITIES** as defined in section 41-2636.

41 ~~4-~~ 5. "Public procurement unit" means either a local public
42 procurement unit, the department, any other state or an agency of the United
43 States.

1 Sec. 25. Section 41-2632, Arizona Revised Statutes, is amended to
2 read:

3 41-2632. Cooperative purchasing authorized; definitions

4 A. Any public procurement unit may either participate in, sponsor,
5 conduct or administer a cooperative purchasing agreement for the procurement
6 of any materials, services, professional services, construction or
7 construction services with one or more public procurement units **OR EXTERNAL**
8 **PROCUREMENT ACTIVITIES** in accordance with an agreement entered into between
9 the participants. **THE COOPERATIVE PURCHASING MAY INCLUDE JOINT OR**
10 **MULTI-PARTY CONTRACTS BETWEEN PUBLIC PROCUREMENT UNITS AND OPEN-ENDED PUBLIC**
11 **PROCUREMENT UNIT CONTRACTS THAT SHALL BE AVAILABLE TO LOCAL PUBLIC**
12 **PROCUREMENT UNITS.** A nonprofit ~~educational or public health institution~~
13 **CORPORATION** may enter into an agreement pursuant to this section if one or
14 more of the parties involved is a public procurement unit. An agreement
15 entered into as provided in this article is exempt from section 11-952,
16 subsection D. Parties under a cooperative purchasing agreement may:

17 1. Sponsor, conduct or administer a cooperative agreement for the
18 procurement or disposal of any materials, services or construction.

19 2. Cooperatively use materials or services.

20 3. Commonly use or share warehousing facilities, capital equipment and
21 other facilities.

22 4. Provide personnel, except that the requesting public procurement
23 unit shall pay the public procurement unit providing the personnel the direct
24 and indirect cost of providing the personnel, in accordance with the
25 agreement.

26 5. On request, make available to other public procurement units
27 informational, technical or other services or software that may assist in
28 improving the efficiency or economy of procurement. The public procurement
29 unit furnishing the informational, technical or other services or software
30 has the right to request reimbursement for the reasonable and necessary costs
31 of providing these services or software.

32 6. **PURSUANT TO THE RULES ADOPTED BY THE DIRECTOR, PURCHASE MATERIALS,**
33 **SERVICES, PROFESSIONAL SERVICES, CONSTRUCTION OR CONSTRUCTION SERVICES UNDER**
34 **THE TERMS OF A CONTRACT BETWEEN A VENDOR AND A PUBLIC PROCUREMENT UNIT OR AN**
35 **EXTERNAL PROCUREMENT ACTIVITY WITHOUT COMPLYING WITH THE REQUIREMENTS OF**
36 **SECTIONS 41-2533, 41-2534 AND 41-2535.**

37 B. The school facilities board or school districts, or both, may enter
38 into an agreement with a public procurement unit pursuant to this section for
39 the purpose of procuring materials and services needed to correct
40 deficiencies in school facilities.

41 C. The activities described in this section do not limit what parties
42 may do under a cooperative purchasing agreement.

43 D. A nonprofit corporation operating as a public procurement unit
44 under this section, on request of the auditor general, shall provide to the

1 auditor general all documentation concerning any cooperative purchasing
2 transaction the public procurement unit administers under this section.

3 E. A nonprofit corporation operating as a public procurement unit
4 under this section shall comply with all procurement laws applicable to the
5 public procurement unit participating in a cooperative purchasing transaction
6 that the nonprofit corporation administers.

7 F. This section does not abrogate the responsibility of each public
8 procurement unit to ensure compliance with procurement laws that apply to the
9 particular public procurement, notwithstanding the fact that the cooperative
10 purchase is administered by a nonprofit corporation operating under this
11 section.

12 G. Any public procurement unit conducting or administering a
13 cooperative purchasing agreement for the procurement of construction services
14 or professional services shall comply with the requirements of section 34-603
15 or 41-2578.

16 H. For the purposes of this section:

17 1. "Construction services" has the same meaning prescribed in section
18 41-2503.

19 2. "Professional services" has the same meaning prescribed in section
20 41-2578.

21 Sec. 26. Section 41-3504, Arizona Revised Statutes, is amended to
22 read:

23 41-3504. Powers and duties of the department; violation;
24 classification

25 A. The department shall:

26 1. Develop, implement and maintain a coordinated statewide plan for
27 information technology. This includes:

28 (a) Adopting statewide technical, coordination and security standards
29 for information technology.

30 (b) Serving as statewide coordinator for information technology
31 resources.

32 (c) Developing a statewide disaster recovery plan.

33 (d) Developing a list of approved department projects by priority
34 category.

35 (e) Developing a detailed list of information technology assets owned,
36 leased or employed by this state.

37 (f) Evaluating and either approving or disapproving budget unit
38 information technology plans. Budget units shall submit information
39 technology plans that include quality assurance plans and disaster recovery
40 plans to the department each year on or before September 1. The legislative
41 and judicial departments of state government shall submit information
42 technology plans for information purposes.

43 (g) Evaluating specific information technology projects relating to
44 the approved budget unit and statewide information technology plans. The
45 department shall approve or reject projects with total costs of at least

1 twenty-five thousand dollars but not more than one million dollars and may
2 establish conditional approval criteria including procurement purchase
3 authority. If the total project costs exceed one million dollars the
4 department shall evaluate the project and make recommendations to the
5 committee. Beginning on June 1, 1998, as part of a budget request for an
6 information technology project that has total costs of at least twenty-five
7 thousand dollars, a budget unit shall indicate the status of review by the
8 department. Projects shall not be artificially divided to avoid review by
9 the department.

10 2. Require that budget units incorporate life cycle analysis
11 ~~prescribed by section 41-2553~~ into the information technology planning,
12 budgeting and procurement processes.

13 3. Require that budget units demonstrate expertise to carry out
14 information technology plans, either by employing staff or contracting for
15 outside services.

16 4. Monitor information technology projects that the department
17 considers to be major or critical, including expenditure and activity reports
18 and periodic review.

19 5. Temporarily suspend the expenditure of monies if the department
20 determines that the information technology project is at risk of failing to
21 achieve its intended results or does not comply with the requirements of this
22 section.

23 6. Continuously study emergent technology and evaluate its impact on
24 this state's system.

25 7. Advise each budget unit as necessary and report to the committee on
26 an annual basis.

27 8. Provide to budget units, ~~—~~ information technology consulting
28 services it deems necessary, either directly or by procuring outside
29 consulting services.

30 9. Maintain all otherwise confidential information received from a
31 budget unit pursuant to this section as confidential.

32 10. Provide staff support to the committee.

33 11. Subject to section 35-149, accept, spend and account for grants,
34 monies and direct payments from public or private sources and other grants of
35 monies or property for the conduct of programs that it deems consistent with
36 the government information technology purposes and objectives of the
37 department.

38 12. Adopt rules it deems necessary or desirable to further the
39 government information technology objectives and programs of the department.

40 13. Formulate policies, plans and programs to effectuate the government
41 information technology purposes of the department.

42 14. Advise and make recommendations to the governor and the legislature
43 on all matters concerning its objectives.

1 15. Contract and enter into interagency and intergovernmental
2 agreements pursuant to title 11, chapter 7, article 3 with any public or
3 private party.

4 16. Have an official seal that shall be judicially noticed.

5 17. On or before December 31, 2015, establish an interactive online
6 directory of codes, rules, ordinances, if available electronically, and
7 statutes to assist individuals and businesses with regulatory requirements
8 and obligations. As provided in this paragraph, counties, municipalities and
9 budget units shall submit information in a manner and format prescribed by
10 the agency.

11 B. The department shall advise the judicial and legislative branches
12 of state government concerning information technology.

13 C. The department may examine all books, papers, records and documents
14 in the office of any budget unit and may require any state officer of the
15 budget unit to furnish information or statements necessary to carry out the
16 provisions of this chapter.

17 D. The director, any member of the director's staff or any employee
18 who knowingly divulges or makes known in any manner not permitted by law any
19 particulars of any confidential record, document or information is guilty of
20 a class 5 felony.

21 Sec. 27. Section 41-3521, Arizona Revised Statutes, is amended to
22 read:

23 41-3521. Information technology authorization committee;
24 members; terms; duties; compensation; definition

25 A. The information technology authorization committee is established
26 consisting of the following members:

27 1. One member of the house of representatives who is appointed by the
28 speaker of the house of representatives and who shall serve as an advisory
29 member.

30 2. One member of the senate who is appointed by the president of the
31 senate and who shall serve as an advisory member.

32 3. Four members from private industry who are appointed by the
33 governor pursuant to section 38-211 and who are knowledgeable in information
34 technology.

35 4. One local government member and one federal government member who
36 are appointed by the governor and who shall serve as advisory members.

37 5. Two members who are directors of state agencies and who are
38 appointed by the governor.

39 6. The administrative director of the courts or the director's
40 designee.

41 7. The director of the department of administration or the director's
42 designee, who shall be the chairperson of the committee but for all other
43 purposes shall serve as an advisory member.

44 8. Two members from either private industry or state government who
45 are appointed by the governor.

1 9. The staff director of the joint legislative budget committee, or
2 the staff director's designee, who shall serve as an advisory member.

3 B. Committee members who are from private industry serve two year
4 terms. The other members serve at the pleasure of their appointing officers.

5 C. For all budget units and the legislative and judicial branches of
6 state government, the committee shall:

7 1. Review established statewide information technology standards and
8 the statewide information technology plan.

9 2. Review the minimum qualifications established by the director for
10 each position authorized for the department for information technology.

11 3. Approve or disapprove all proposed information technology projects,
12 including project changes and contract amendments, that exceed a total cost
13 of one million dollars, excluding public monies from county, municipal and
14 other political subdivision sources that are not deposited in a state
15 fund. As part of a budget request for an information technology project that
16 has total costs of more than one million dollars, a budget unit and the
17 legislative and judicial branches of state government shall indicate the
18 status of review by the committee. Projects shall not be artificially
19 divided to avoid review by the committee.

20 4. Develop a report format that incorporates the life cycle analysis
21 ~~prescribed by section 41-2553~~ for use in submitting project requests to the
22 committee.

23 5. Require expenditure and activity reports from a budget unit or the
24 legislative or judicial branches of state government on implementing
25 information technology projects approved by the committee.

26 6. Conduct periodic reviews on the progress of implementing
27 information technology projects approved by the committee.

28 7. Monitor information technology projects that the committee
29 considers to be major or critical.

30 8. Temporarily suspend the expenditure of monies if the committee
31 determines that the information technology project is at risk of failing to
32 achieve its intended results or does not comply with the requirements of this
33 chapter.

34 9. Hear and decide appeals made by budget units regarding the
35 department's rejection of their proposed information technology plans or
36 projects.

37 10. Report to the governor, the speaker of the house of
38 representatives, the president of the senate, the secretary of state and the
39 director of the Arizona state library, archives and public records at least
40 annually on all matters concerning its objectives. This includes:

41 (a) Its review of the statewide information technology plan developed
42 by the department.

43 (b) The findings and conclusions of its periodic reviews.

44 (c) Its recommendations on desirable legislation relating to
45 information technology.

1 11. Adopt rules it deems necessary or desirable to further the
2 objectives and programs of the committee.
3 D. The committee shall meet at the call of the chairperson.
4 E. Members of the committee are not eligible to receive compensation
5 but are eligible to receive reimbursement for expenses pursuant to title 38,
6 chapter 4, article 2.
7 F. For the purposes of this section, "advisory member" means a member
8 who gives advice to the other members of the committee at committee meetings
9 but who is not eligible to vote and is not a member for purposes of
10 determining whether a quorum is present.