Arizona Department of Administration
State Procurement Office

ARIZONA PROCUREMENT CODE

This document, published by the Arizona State Procurement office is issued as a convenience to those persons involved with public procurement in this State. It is a compilation on one place of those statutes, A.R.S. 41-2501 et. seq., and administrative rules and regulations A.A.C. R2-7-101 et.seq., that constitute the Arizona Procurement Code ("Code").

Although every effort has been taken to ensure the accuracy of the material presented, it is not intended or represented to be the official record of laws and regulations of the State of Arizona. True and correct copies of statutes of this State are found in the Arizona Revised Statutes filed and issued by the Secretary of State. True and correct copies of the administrative rules and regulations are contained in the Arizona Administrative Code filed and issued by the Secretary of State.

Each person who may be involved with any action that requires a review of the official text is cautioned to consult the Arizona Revised Statutes and Arizona Administrative Code. Note that any dates appearing at the top or bottom of pages contained herein do not indicate the date that the particular statute or rule or regulation was enacted, adopted or amended.

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Chapter 23

Arizona Procurement Code

Purpose

Laws 1984, Ch. 251, 1 and 40 provide:

Section 1 Purpose
The purposes of this act are to:

1. Simplify, clarify and modernize the law governing procurement by the state.

2. Permit the continued development of procurement policies and practices.

3. Make as consistent as possible the procurement laws among various state agencies.

4. Provide for increased public confidence in the procedures followed in public procurement.

5. Ensure the fair and equitable treatment of all persons who deal with the procurement system of this state.

6. Provide increased economy in state procurement activities and maximize to the fullest extent practicable in purchasing value of public monies of this state.

7. Foster effective broad-based competition within the free enterprise system.

8. Provide safeguards for the maintenance of a procurement system of quality and integrity.

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Chapter 23

Arizona Procurement Code

Article 1 General Provisions

§ 41-2501. Applicability

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

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

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

D. Notwithstanding any other law, sections 41-2517 and 41-2546 apply to any agency as defined in section 41-1001, including the office of the governor.

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

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

G. The Arizona state lottery commission is exempt from this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets and related materials. The executive director of the Arizona state lottery commission shall adopt rules substantially equivalent to the policies and procedures in this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets or related materials. All other procurement shall be as prescribed by this chapter.

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

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

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

K. The state transportation board and the director of the department of transportation are exempt from this chapter other than section 41-2586 for the procurement of construction or reconstruction,

including engineering services, of transportation facilities or highway facilities and any other services that are directly related to land titles, appraisals, real property acquisition, relocation, property management or building facility design and construction for highway development and that are required pursuant to title 28, chapter 20.

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

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

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

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

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

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

1. With a provider licensed or certified by an agency of this state to provide child day care services or with a provider of family foster care pursuant to section 8-503 or 36-554.
2. With area agencies on aging created pursuant to the older Americans act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001 through 3058ff).
3. For services pursuant to title 36, chapter 29, article 2.
4. With an eligible entity as defined by Public Law 105-285, section 673(1)(a)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

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

1. Mental health services pursuant to section 36-189, subsection B.
2. Services for the seriously mentally ill pursuant to title 36, chapter 5, article 10.
3. Drug and alcohol services pursuant to section 36-141.
4. Domestic violence services pursuant to title 36, chapter 30, article 1.

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

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

U. The Arizona department of agriculture is exempt from this chapter with respect to contracts for private labor and equipment to effect cotton or cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2, article 1.

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

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

X. The Arizona state schools for the deaf and the blind are exempt from this chapter for the purchase of textbooks and when purchasing products through a cooperative that is organized and operates in accordance with state law if such products are not available on a statewide contract and are related to the operation of the schools or are products for which special discounts are offered for educational institutions.

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

Z. Notwithstanding section 41-2534, the director of the state department of corrections may contract with local medical providers in counties with a population of less than four hundred thousand persons for the following purposes:

1. To acquire hospital and professional medical services for inmates who are incarcerated in state department of corrections facilities that are located in those counties.
2. To ensure the availability of emergency medical services to inmates in all counties by contracting with the closest medical facility that offers emergency treatment and stabilization.

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

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

1. The division does not pay any public monies to an authorized third party.
2. Exclusivity is not granted to an authorized third party.
3. The director has complied with the requirements prescribed in title 28, chapter 13 in selecting an authorized third party.

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

DD. The state forester is exempt from this chapter for purchases and contracts relating to wildland fire suppression and pre-positioning equipment resources and for other activities related to combating wildland fires and other unplanned risk activities, including fire, flood, earthquake, wind and

hazardous material responses. All other procurement by the state forester shall be as prescribed by this chapter.

EE. The cotton research and protection council is exempt from this chapter for procurements.

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

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

HH. The Arizona exposition and state fair board is exempt from this chapter for contracts for professional entertainment.

II. This chapter does not apply to the purchase of water, gas or electric utilities.

JJ. This chapter does not apply to professional certifications, professional memberships and conference registrations.

KK. The department of gaming is exempt from this chapter for problem gambling treatment services contracts with licensed behavioral health professionals.

LL. This chapter does not apply to contracts for credit reporting services.

MM. This chapter does not apply to contracts entered into by the department of child safety:

1. With a provider of family care pursuant to section 8-503 or 36-554.
2. With an eligible entity as defined by Public Law 105-285, section 673(1)(a)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

§ 41-2502. Determinations

Written determinations required by this chapter shall be retained in the appropriate official records file of the director.

§ 41-2504. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this chapter.

R2-7-102. Written Determinations

A. If a written determination is required under applicable law, an agency chief procurement officer shall include the basis for the action taken in the written determination.

B. The agency chief procurement officer shall place the written determination into the purchasing agency's procurement file.

C. A procurement file located at a state agency is considered the official records file of the director as required by A.R.S. § 41-2502, if the file is maintained by an agency chief procurement officer.

R2-7-103. Confidential Information

A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.

B. Until a final determination is made under subsection (C), an agency chief procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.

C. Upon receipt of a submission, an agency chief procurement officer shall make one of the following written determinations:
   1. The designated information is confidential and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest;
   2. The designated information is not confidential; or
   3. Additional information is required before a final confidentiality determination can be made.

D. If an agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.

E. An agency chief procurement officer may release information designated as confidential under subsection (A) if:
   1. A request for review is not received by the state procurement administrator within the time period specified in the notice; or
   2. The state procurement administrator, after review, makes a written determination that the designated information is not confidential.

Definitions Article 1 Through 13

§ 41-2503. Definitions

In this chapter, unless the context otherwise requires:

1. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.
2. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.
3. "Change order" means a written order that is signed by a procurement officer and that directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.
4. "Construction":
   a. Means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property.

b. Does not include:
   i. The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
   ii. The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.

5. "Construction-manager-at-risk" means a project delivery method in which:
   a. There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the purchasing agency may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
   b. The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
   c. Design and construction of the project may be either:
      i. Sequential with the entire design complete before construction commences.
      ii. Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
   d. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
6. "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:
   a. Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
   b. A combination of construction and, as elected by the purchasing agency, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.
7. "Contract" means all types of state agreements, regardless of what they may be called, for the procurement of materials, services, construction, construction services or the disposal of materials.
8. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
9. "Contractor" means any person who has a contract with a state governmental unit.
10. "Data" means documented information, regardless of form or characteristic.
11. "Department" means the department of administration.
12. "Design-bid-build" means a project delivery method in which:
    a. There is a sequential award of two separate contracts.
    b. The first contract is for design services.
    c. The second contract is for construction.
    d. Design and construction of the project are in sequential phases.
    e. Finance services, maintenance services and operations services are not included.
13. "Design-build" means a project delivery method in which:

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

b. Design and construction of the project may be either:

   i. Sequential with the entire design complete before construction commences.

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

c. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

14. “Design professional” means an individual or firm that is registered by the state board of technical registration pursuant to title 32, chapter 1 to practice architecture, engineering, geology, landscape architecture or land surveying or any combination of those professions and any person employed by the registered individual or firm.

15. "Design requirements":

    a. Means at a minimum the purchasing agency's written description of the project or service to be procured, including:

       i. The required features, functions, characteristics, qualities and properties.

       ii. The anticipated schedule, including start, duration and completion.

       iii. The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.

    b. May include:

       i. Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by a design professional who is registered pursuant to section 32-121.

       ii. Additional design information or documents that the purchasing agency elects to include.

16. "Design services" means architect services, engineer services or landscape architect services.

17. "Designee" means a duly authorized representative of the director.

18. "Director" means the director of the department of administration.

19. "Employee" means an individual drawing a salary from a state governmental unit, whether elected or not, and any noncompensated individual performing personal services for any state governmental unit.

20. "Engineer services" means those professional engineer services that are within the scope of engineering practice as provided in title 32, chapter 1.

21. "Finance services" means financing for a construction services project.

22. "General services administration contract" means contracts awarded by the United States government general services administration.

23. "Grant" means the furnishing of financial or other assistance, including state funds or federal grant funds, by any state governmental unit to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.

24. "Job-order-contracting" means a project delivery method in which:
    a. The contract is a requirements contract for indefinite quantities of construction.
    b. The construction to be performed is specified in job orders issued during the contract.
    c. Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.
25. "Landscape architect services" means those professional landscape architect services that are within the scope of landscape architectural practice as provided in title 32, chapter 1.
26. "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.
27. "Materials":
    a. Means all property, including equipment, supplies, printing, insurance and leases of property.
    b. Does not include land, a permanent interest in land or real property or leasing space.
28. "Operations services" means routine operation of existing facilities, structures, buildings or real property.
29. "Owner" means a state purchasing agency or state governmental unit.
30. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.
31. "Preconstruction services" means services and other activities during the design phase.
32. "Procurement":
    a. Means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services.
    b. Includes all functions that pertain to obtaining any materials, services, construction or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
33. "Procurement officer":
    a. Means any person duly authorized to enter into and administer contracts and make written determinations with respect to the contracts.
    b. Includes an authorized representative acting within the limits of the authorized representative's authority.
34. "Purchasing agency" means any state governmental unit that is authorized by this chapter or rules adopted pursuant to this chapter, or by way of delegation from the director, to enter into contracts.
35. "Services":
    a. Means the furnishing of labor, time or effort by a contractor or subcontractor that does not involve the delivery of a specific end product other than required reports and performance.
    b. Does not include employment agreements or collective bargaining agreements.
36. "Significant procurement role":
    a. Means any role that includes any of the following duties:
        (i) Participating in the development of a procurement.
        (ii) Participating in the development of an evaluation tool.
        (iii) Approving a procurement or an evaluation tool.

(iv) Soliciting quotes greater than ten thousand dollars for the provision of materials, services or construction.

(v) Serving as a technical advisor or an evaluator who evaluates a procurement.

(vi) Recommending or selecting a vendor that will provide materials, services or construction to this state.

(vii) Serving as a decision maker or designee on a protest or an appeal by a party regarding an agency procurement selection or decision.

b. Does not include making decision on developing specifications and the scope of work for a procurement if the decision is based on the application of commonly accepted industry standards or known published standards of the agency as applied to the project, services, goods or materials.

37. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state.
38. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with a state governmental unit.
39. "Using agency" means any state governmental unit that uses any materials, services or construction procured under this chapter.

R2-7-101. Definitions

In this Chapter, unless the context otherwise requires:

1. “Affiliate” means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. “Agency chief procurement officer” means the procurement officer within a state governmental unit, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other person within a state governmental unit who does not have this written delegation of authority.
3. “Aggregate dollar amount” means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. “Alternate project delivery methods” means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. “Arizona Procurement Code” means A.R.S. Title 41, Chapter 23 and this Chapter.
6. “Arizona state contract” means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. “Award” means a determination by the state that it is entering into a contract with one or more offerors.
8. “Best and Final Offer” means a revision to an offer submitted after negotiations are completed that contain the offeror’s most favorable terms for price, service, and products to be delivered.
9. “Bid” means an offer in response to solicitation.

10. “Bidder” means “offeror” as defined in R2-7-101(34).
11. “Brand name or equivalent specification” means a written description that uses one or more manufacturers’ product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
12. “Brand name specification” means a written description limited to a list of one or more items by manufacturers’ product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
13. “Clergy” includes the same persons described in A.R.S. §32-3271(A)(3).
14. “Component” means a part of a manufactured product.
15. “Contract amendment” means a written modification of a contract under A.R.S. § 41-2503(8) or a unilateral exercise of a right contained in the contract.
16. “Cost data” means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.
17. “Cost-plus-a-percentage-of-cost contract” means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
18. “Day” means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. “Debarment” means an action taken by the director under R2-7-C901 that prohibits a person from participating in the state procurement process.
20. “Defective data” means data that is inaccurate, incomplete, or outdated.
21. “Dentist” means a person licensed under A.R.S. Title 32, Chapter 11.
22. “Descriptive literature” means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
23. “Eligible procurement unit” means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency that serves individuals with disabilities as defined in A.R.S. § 41-2636, that is eligible under a cooperative agreement to use Arizona state contracts.
24. “Filed” means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
25. “Finished goods” means units of a manufactured product awaiting sale.
26. “Force account” as used in A.R.S. § 41-2572, means work performed by the state’s regularly employed personnel.
27. “Governing instruments” means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
28. “In writing” has the same meaning as “written” or “writing” in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.

29. "Interested party" means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
30. "Legal counsel" means a person licensed as an attorney by the Arizona Supreme Court.
31. "May" means something is permissive.
32. "Negotiation" means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by this Chapter.
33. "Offer" means a response to a solicitation.
34. "Offeror" means a person who responds to a solicitation.
35. "Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
36. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
37. "Procurement file" means the official records file of the director whether located in the office of the director or at a public procurement unit. The procurement file shall include (electronic or paper) the following:
    a. List of notified vendors,
    b. Final solicitation,
    c. Solicitation amendments,
    d. Bids and offers,
    e. Offer revisions and best and final offers,
    f. Discussions,
    g. Clarifications,
    h. Final evaluation reports, and
    i. Additional information, if requested by the agency chief procurement officer and approved by the state procurement administrator.
38. "Procurement request" means the document that initiates a procurement.
39. "Proposal" means an offer submitted in response to a solicitation.
40. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
41. "Raw materials" means goods, excluding equipment and machinery, purchased for use in manufacturing a product.
42. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
43. "Shall" means something is mandatory.
44. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than $4 million for the last complete fiscal year.

45. “Solicitation” means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
46. “Source selection method” means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.
47. “State procurement administrator” means the individual appointed by the director as a chief procurement officer for a state, or a state procurement administrator’s authorized designee. A different title may be used for this position.
48. “State procurement office” means an office that acts under the authority delegated to the state procurement administrator.
49. “Suspension” means an action taken by the director under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
50. “Trade secret” means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

§ 41-2531. Definitions

In this article, unless the context otherwise requires:

1. "Bidder prequalification" means determining in accordance with rules adopted pursuant to this chapter that a prospective bidder or offeror satisfies the criteria for being included on the bidder's list.
2. "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of this chapter, and paid a fee, if provided for in the contract.
3. "Demonstration project" means a project in which a vendor supplies a service or material to this state for which the state does not pay but for which this state may be obligated to provide routine support such as utility cost and operating personnel.
4. "Established catalogue price" means the price included in a catalogue, price list, schedule or other form that:
    (a) Is regularly maintained by a manufacturer, distributor or contractor.
    (b) Is either published or otherwise available for inspection by customers.
    (c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.
5. "Invitation for bids" means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in section 41-2533.
6. "Multistep sealed bidding" means a two phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by this state and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

7. "Paper" means newspaper, high grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than ten per cent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.
8. "Paper product" means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten per cent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturates.
9. "Post-consumer material" means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer material does not include discards from industrial or manufacturing processes.
10. "Purchase description" means the words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to, or made a part of, the solicitation.
11. "Recycled paper" means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least forty per cent recovered wastepaper with ten per cent of that being post-consumer material.
12. "Request for information" means all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.
13. "Request for proposals" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in section 41-2534.
14. "Responsible bidder or offeror" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.
15. "Responsive bidder" means a person who submits a bid which conforms in all material respects to the invitation for bids.
16. "Unsolicited proposal" means a written proposal that is submitted on the initiative of the offeror for the purposes of obtaining a contract with this state and that is not in response to a formal or informal request from this state.
17. "Wastepaper" means recyclable paper and paperboard, including high grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

§ 41-2554. Procurement of earth moving, material handling, road maintenance and construction equipment; definitions

A. Notwithstanding the criteria for contract award prescribed in section 41-2533, a contract for earth moving, material handling, road maintenance and construction equipment shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids, which shall include as price evaluation criteria the total life cycle cost including residual value of the earth moving, material handling, road maintenance and construction equipment and such other additional evaluation factors set forth in the invitation for bids. No factors or criteria may be used in the evaluation of bids for earth moving, material handling, road maintenance and construction equipment, other than those

specified in the invitation for bid. Additional evaluation factors shall include, to the extent practicable, outright purchase. The contract award shall be based on the price evaluation criteria deemed by the state to be most advantageous to the state. Procedures for awarding contracts for earth moving, material handling, road maintenance and construction equipment pursuant to this subsection shall be the same as those prescribed in section 41-2533.

B. Notwithstanding the criteria for contract award prescribed in section 41-2534, a contract for earth moving, material handling, road maintenance and construction equipment shall be awarded to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state. The evaluation factors set forth in the request for proposals shall include the total life cycle cost including residual value of each proposal and such other additional evaluation factors set forth in the request for proposals. No factors or criteria may be used in the evaluation of proposals for earth moving, material handling, road maintenance and construction equipment, other than those specified in the request for proposal. Additional evaluation factors set forth in the request for proposal shall include, to the extent practicable, outright purchase. The contract award shall be based on the price evaluation criteria deemed by the state to be most advantageous to the state. Procedures for awarding contracts for earth moving, material handling, road maintenance and construction equipment pursuant to this subsection shall be the same as those prescribed in section 41-2534.

C. The minimum unit list price for earth moving, material handling, road maintenance and construction equipment shall be adjusted annually by the consumer price index, United States average.

D. As used in this section:

1. "Earth moving, material handling, road maintenance, and construction equipment" means a track-type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel loader or track loader, having a published manufacturer's minimum unit list price of fifty thousand dollars or more and a minimum expected life cycle of three years.
2. "Outright purchase" means the initial cost to the state for the earth moving, material handling, road maintenance, and construction equipment, including all vendor charges and financing costs.
3. "Residual value" means the guaranteed minimum market value of the earth moving, material handling, road maintenance and construction equipment at the end of the life cycle of the earth moving, material handling, road maintenance and construction equipment being procured, as determined by a guaranteed minimum value offered by the vendor or other parties in its bid.
4. "Total life cycle cost" means total state costs and financing costs through the life cycle of the earth moving, material handling, road maintenance and construction equipment being purchased less residual value.
5. "Total state costs" means cost to the state for the earth moving, material handling, road maintenance and construction equipment including repair costs, present value of monies, vendor charges, and all other identifiable state costs that may be incurred.

6. "Vendor charges" means costs of all vendor support, materials, transportation and all other identifiable costs associated with the vendor's proposal or bid.
7. "Vendor support" means services provided by the vendor for items such as consulting, education and training.

§ 41-2561. Definition

As used in this article, "specification" means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery.

§ 41-2571. Definitions

As used in this article:

1. "Architect services", "engineer services", "land surveying services", "assayer services", "geologist services" and "landscape architect services" means those professional services within the scope of the practice of those services as provided in title 32, chapter 1, article 1.
2. "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

§ 41-2601. Definitions

In this article, unless the context otherwise requires:

1. "Excess materials" means any materials which have a remaining useful life but which are no longer required by the using agency in possession of the materials.
2. "Nonexpendable materials" means all tangible materials which have an original acquisition cost over an amount set by regulation and a probable useful life of more than one year.
3. "Surplus materials" means any materials that no longer have any use to this state or materials acquired from the United States government. This includes obsolete materials, scrap materials and nonexpendable materials that have completed their useful life cycle.

§ 41-2631. Definitions

In this article, unless the context otherwise requires:

1. "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.
2. “External procurement activity” means any buying organization not located in this state that would qualify as a public procurement unit.
3. "Local public procurement unit" means any political subdivision, any agency, board, department or other instrumentality of such political subdivision and any nonprofit corporation created solely for the purpose of administering a cooperative purchase under this article.
4. "Nonprofit corporation" means any nonprofit corporation as designated by the internal revenue service under section 501(c)(3) through 501(c)(6) or under section 115, if created by two or more local public procurement units, and includes certified nonprofit agencies that serve individuals with disabilities as defined in section 41-2636.

5. "Public procurement unit" means either a local public procurement unit, the department, any other state or an agency of the United States.

§ 41-2671. Definitions

In this article, unless the context otherwise requires:

1. "Information services" means data processing, telecommunications and office systems technologies and services.
2. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.
3. "On-line bidding" means a procurement process in which public agencies receive vendors' bids for goods, services, construction or information services electronically over the internet in a real-time, competitive bidding event.

Article 2 Procurement Organization

§ 41-2511. Authority of the director

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

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

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

1. Procure or supervise the procurement of all materials, services and construction needed by this state.
2. Establish guidelines for the management of all inventories of materials belonging to this state.
3. Sell, trade or otherwise dispose of surplus materials belonging to this state.
4. Establish and maintain programs for the inspection, testing and acceptance of materials, services and construction.
5. Establish and maintain programs to ensure procurement compliance with this chapter and applicable rules.
6. Establish and maintain a mandatory procurement training and certification program to ensure consistency in procurement practices for those authorized to perform procurement functions under this chapter.
7. Employ staff as necessary to perform the duties prescribed in this chapter.
8. Establish procurement offices as the director determines necessary to maintain an effective and efficient program of procurement administration.
9. Provide consultation to state agency management in all aspects of procurement to increase efficiency and economy in state agencies by improving the methods of procurement with full recognition of the requirements and needs of management.
10. Enter into agreements with any state government unit or political subdivision of this state or agency of a political subdivision of this state to furnish procurement administration

services and facilities of the department. Unless monies have been appropriated by the legislature for this purpose, any agreement shall provide for reimbursement to this state of the actual cost of the services and facilities furnished, as determined by the director.

11. Enter into agreements with the attorney general for dedicated legal resources to support any state governmental unit in procurement legal matters, including negotiations, protests and appeals.

§ 41-2512. Delegation of authority or functions by the director

The director may delegate authority or specific procurement functions to any state governmental unit.

R2-7-201. State Procurement Administrator: Duties and Qualifications

A. The director shall hire a state procurement administrator with executive and organizational skills and relevant, recent experience in public procurement.

B. The state procurement administrator shall:
   1. Administer the procurement of materials, services, and construction needed by the state;
   2. Establish procurement policy and procedure;
   3. Establish procurement training standards;
   4. Designate if an Arizona state contract is mandatory;
   5. Delegate procurement authority under R2-7-202; and
   6. Monitor compliance of state governmental units with state procurement laws.

C. The state procurement administrator shall maintain a record of each contract awarded under A.R.S. §§ 41-2536 (sole source procurement) and 41-2537 (emergency procurement) that exceeds the amount prescribed in A.R.S. § 41-2535(A). The record shall be maintained for a minimum of five years. The state procurement administrator shall ensure that the record is available for public inspection and contains all of the following:
   1. Each contractor's name;
   2. The estimated amount of each contract; and
   3. A description of the item or service procured.

R2-7-202. Delegation of Procurement Authority to State Governmental Units

A. The state procurement administrator shall delegate procurement authority to a state governmental unit based upon the following criteria:
   1. The procurement expertise, knowledge, experience, and performance of the state governmental unit's agency chief procurement officer, as identified by the state governmental unit; and
   2. The impact of the delegation on procurement efficiency and effectiveness.

B. The state procurement administrator shall delegate procurement authority in a written document that specifies all of the following:
   1. The agency chief procurement officer,
   2. The specific authority delegated,
   3. Any limits or restrictions upon the delegated authority,

4. Whether the authority may be further delegated, and
5. The duration of the delegation.

C. The head of a purchasing agency shall immediately report any significant change regarding the criteria considered under subsection (A) to the state procurement administrator.

D. A purchasing agency shall exercise delegated authority according to A.R.S. Title 41, Chapter 23 and A.A.C. Title 2, Chapter 7.

E. An agency chief procurement officer shall submit to the state procurement administrator any procurement that exceeds the agency's delegated authority.

F. The state procurement administrator may revoke, suspend, or modify delegated authority for failure to comply with A.R.S. Title 41, Chapter 23 or A.A.C. Title 2, Chapter 7, or a significant change regarding the criteria considered under subsection (A).

G. The state procurement administrator retains all authorities and duties delegated to an agency chief procurement officer at a state governmental unit.

R2-7-203. Agency Chief Procurement Officer

A. An agency chief procurement officer may further delegate procurement authority within the purchasing agency, within the limits specified by the state procurement administrator.

B. The agency chief procurement officer shall notify the state procurement administrator in writing of employees who have delegated procurement authority.

R2-7-204. State Employee or Public Officer Use of State Contracts

State employees and public officers shall not purchase materials or services for their own personal or business use from contracts entered into by the state unless authorized in writing by the director. The determination shall state how the purchase will further the interests of the state.

R2-7-205. Procurement Requests by Purchasing Agencies

If a purchasing agency determines that a procurement is necessary, the purchasing agency shall submit a procurement request, in writing, to the procurement officer. The procurement request shall be submitted in a manner expressly approved by the agency chief procurement officer.

R2-7-206. Authorized Procurement Officers

A procurement officer shall perform all procurement duties in accordance with the Arizona Procurement Code and within the authority delegated to the procurement officer in accordance with this Chapter.

R2-7-207. Resolution of Intra-agency Procurement Disputes

Procurement disputes between a purchasing agency and its agency chief procurement officer shall be resolved by the state procurement administrator.

R2-7-208. Authorization of Electronic Transactions

A. An electronic media transaction, involving an electronic record or electronic signature, is authorized if the transaction is consistent with state law.
B. The state procurement administrator may limit the use of electronic transactions, based on consideration of the best interest of the state.

R2-7-209. Prospective Suppliers List

A. The state procurement administrator shall compile and maintain a prospective suppliers list. To be included on the prospective suppliers list, a person shall register with the state procurement office.
B. The state procurement administrator may remove suppliers from the prospective suppliers list if a notice sent to the supplier is returned. The state procurement administrator shall maintain a record of the date and reason for removal of a supplier from the prospective suppliers list.

§ 41-2513. Authority to contract for certain services

A. For the purpose of procuring the services of clergy, certified public accountants, legal counsel pursuant to section 41-192, subsection D, physicians or dentists as defined by the laws of this state, any state governmental unit may act as a purchasing agency and contract on its own behalf for such services, subject to this chapter and rules adopted by the director.
B. In accordance with the provisions of section 41-192, subsection D and notwithstanding any contrary statute, no contract for the services of legal counsel may be awarded without the approval of the attorney general.
C. The auditor general shall approve state agency contracting for financial and compliance auditing services except if specific statutory authority is otherwise provided. The auditor general shall ensure that such contract audits are conducted in accordance with generally accepted governmental auditing standards. An audit shall not be accepted until it has been approved by the auditor general.
D. The department may approve all information technology purchases exceeding twenty-five thousand dollars for a budget unit as defined in section 41-3501. Purchases shall not be artificially divided to avoid review.
E. Payment for any services, including those services described in subsections A, B and C of this section, procured under this chapter shall not be made unless pursuant to a fully approved written contract.

§ 41-2514. State procurement rules

A. The director may adopt and issue rules pursuant to chapter 6 of this title to carry out the purposes of this chapter.
B. Except by mutual consent of the parties to the contract, no rule promulgated under this chapter may change any commitment, right or obligation of this state or of a contractor under a contract in existence on the effective date of the rule.

§ 41-2515. Collection of data concerning public procurement

All using agencies shall furnish such reports as the director may require concerning usage, needs and stocks on hand, and the director may prescribe forms and procurement systems for use by the using agencies in requisitioning, ordering and reporting of materials, services and construction

§ 41-2516. Procurement advisory groups

A. The director may appoint advisory groups or evaluation committees to assist with respect to specifications, solicitation evaluations or procurement in specific areas and with respect to any other matters within the authority of the director.

B. Members of advisory groups or evaluation committees are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

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

A. It is unlawful for a procurement officer or an employee having a significant procurement role to accept any position or have employment discussions with a person or firm lobbying or potentially responding to the solicitation beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending at the time of contract award. It is unlawful for a procurement officer or an employee having a significant procurement role to accept any position or have employment discussions with the successful offeror or offerors and their lobbyists beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant procurement role in the particular procurement.

B. It is unlawful for a procurement officer or an employee having a significant procurement role to solicit an employment opportunity, regardless of who would receive such an opportunity, from any person or firm lobbying or potentially responding to a solicitation for the procurement of materials, services or construction beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending at the time of contract award. It is unlawful for a procurement officer or an employee having a significant procurement role to solicit an employment opportunity, regardless of who would receive such an opportunity, from the successful offeror or offerors and their lobbyists beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or completion impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant role in the particular procurement.

C. It is unlawful for a person or firm lobbying or potentially responding to a solicitation for the procurement of materials, services or construction to offer employment to a procurement officer, a procurement employee or an employee having a significant procurement role beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending at the time of contract award. It is unlawful for the successful offeror or offerors and their lobbyists to offer employment to a procurement officer, a procurement employee or an employee having a significant procurement role beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant role in the particular procurement.

D. The director of the department of administration may waive any or all of the waiting period required pursuant to subsections A, B and C of this section in excess of twenty-four months for a procurement officer or an employee with a significant procurement role if the period of time that follows the signature of the nondisclosure agreement exceeds twenty-four months. A procurement officer or an employee seeking a waiver shall make a written request to the officer's or eomployee's state governmental unit director, and the director of the state governmental unit shall forward the request with a written recommendation to the director of the department of administration. The director of the department of administration shall provide a written decision and justification within fifteen business days after the receipt of the complete request. The director of the department of administration may not approve waiver requests for matters still in evaluation or within six months following the contract award. If the requesting party is the director or a deputy director of a state governmental unit, the request for a waiver and all written materials, including a director recommendation, must be forwarded to the governor for a final decision, except that the director may not make any recommendation or determination on the director's own request.

E. In response to a written request from an employee seeking clarification on whether the employee has played a significant role in a procurement, the director shall issue a determination in writing within fifteen days after receiving the request. The director may make a determination in writing that this section and section 41-753, subsection D do not apply if a particular solicitation, sole source procurement or competition impracticable procurement has been canceled or is associated with the privatization of existing state services that would result in the elimination of the position in state service of an employee with a significant procurement role. The director may delegate the authority to make determinations pursuant to this subsection to a director of a state agency. An agency director or agency deputy director may request a determination from the office of the governor regarding whether the agency director or agency deputy director played a significant role in a particular procurement for the purposes of the one-year employment restriction, and the office of the governor shall make a determination within thirty days after the receipt of the written request.

F. It is unlawful for a procurement officer or an employee who was previously employed by a person or firm responding to a solicitation to serve in a significant procurement role for a period of one year following the person's previous employment.

G. Beginning October 1, 2014, if an agency uses a qualified vendor list of persons or entities that are eligible to be selected to design, develop, implement or construct any form of project associated with the list, any procurement officer who was assigned to work evaluating or approving the vendor list or any employee having a significant procurement role in developing the vendor list shall not accept an offer of employment from or have employment discussions with a vendor on the list within one year after the initial publication of the list or accept an offer of employment from or have employment discussions with a newly added vendor within one year after the vendor is added to the original list. If a vendor from an approved list of qualified vendors is awarded a contradct that is associated with the list, a procurement officer involved in selecting the vendor or an employee having a significant procurement role in selecting the vendor shall not accept an offer of employment from or have employment discussions with that vendor within one year after that vendor is awarded the contract.

H. On signature of a nondisclosure agreement pertaining to a particular solicitation, or at the time of a request for a sole source or competition impracticable procurement, a procurement officer or an employee having a significant role in the procurement shall provide written disclosure of any financial interest the officer or employee, or the spouse of the officer or employee, may hold.

I. A person who knowingly violates this section is guilty of a class 2 misdemeanor. On conviction the person is ineligible for appointment to or employment in a position in the state personnel system for a period of five years and, if the person is an employee of this state at the time of conviction, is subject to suspension for not less than ninety days or dismissal.

J. This section does not apply to a procurement officer or employee who in good faith relies on a determination issued by the director pursuant to subsection D of this section that the procurement officer or employee has not had a significant procurement role.

Article 3 Source Selection and Contract Formation
Part A. General Provisions

§ 41-2532. Methods of source selection

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

R2-7-A301. Source Selection Method: Determination Factors

A. A state governmental unit shall use any existing Arizona state contract designated as mandatory to satisfy requirements for those materials and services covered by such contracts.

B. If a state governmental unit believes that an Arizona state contract, designated as mandatory, does not satisfy its requirements, the state governmental unit may only procure the material or service from another source with the written approval of the state procurement administrator and in conformance with the applicable source selection method.

C. The agency chief procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the

procurement is not artificially divided, fragmented, or combined to circumvent the Arizona Procurement Code.

D. The agency chief procurement officer shall not award a contract or incur an obligation on behalf of the state unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the agency chief procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

§ 41-2541. Prequalification of contractors

Prospective contractors may be prequalified for particular types of materials, services and construction. Prospective contractors have a continuing duty to provide the director with information on any material change affecting the basis of prequalification. Solicitation mailing lists of potential contractors shall include the prequalified contractors.

§ 41-2542. Bid and contract security

The director may require, in accordance with rules adopted by the director, the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the director shall consider the nature of the performance and the need for future protection to this state. The requirement for security must be included in the invitation for bids or request for proposals.

§ 41-2547. Right to inspect plant

The state may at reasonable times inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by this state.

§ 41-2548. Right to audit records

A. The state may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in section 41-2543 to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for five years after the completion of the contract pursuant to section 35-214.

B. The state is entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of five years after the completion of the prime contract pursuant to section 35-214 and by the subcontractor for a period of five years after the completion of the subcontract pursuant to section 35-214.

§ 41-2549. Reporting of anticompetitive practices

If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the director and the attorney general. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the director.

§ 41-2550. Retention of procurement records

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Arizona state library, archives and public records.

§ 41-2551. Record of procurement actions

A. The director shall maintain a record listing all contracts in excess of an amount to be determined by regulation made under section 41-2536 or 41-2537 for a minimum of five years. The record shall contain:
   1. Each contractor's name.
   2. The amount and type of each contract.
   3. A listing of the materials, services or construction procured under each contract.
B. The record shall be available for public inspection.

§ 41-2533. Competitive sealed bidding

A. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 41-2532.
B. An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.
C. Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids, in accordance with rules adopted by the director. The notice may include publication one or more times in a newspaper of general circulation a reasonable time before bid opening. If the invitation for bids is for the procurement of services other than those described in sections 41-2513, 41-2578, 41-2579 and 41-2581, the notice shall include publication in a single newspaper or in multiple newspapers within this state. The publication shall be not less than two weeks before bid opening and shall be circulated within the affected governmental jurisdiction. The notice may also be posted at a designated site on a worldwide public network of interconnected computers.
D. Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be specified by rule, together with the name of each bidder shall be recorded. This record shall be open to public inspection at the bid opening in a manner prescribed by rule. The bids shall not be open for public inspection until after a contract is awarded. To the extent the bidder designates and the state concurs, trade secrets or other proprietary data contained in the bid documents shall remain confidential in accordance with rules adopted by the director.
E. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids,

including criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose, as prescribed in rules adopted by the director. Evaluation criteria shall not be used for construction and no criteria may be used in bid evaluation that are not set forth in the invitation for bids.

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

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

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

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

§ 41-2539. Cancellation of invitation for bids or requests for proposals

An invitation for bids, a request for proposals or other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation if it is in the best interests of this state. The reasons for the cancellation or rejection shall be made part of the contract file.

§ 41-2540. Responsibility of bidders and offerors

A. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with rules adopted by the director. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of nonresponsibility with respect to the bidder or offeror. A finding of nonresponsibility shall not be construed as a violation of the rights of any person.

B. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the office of the director or the purchasing agency without prior written consent by the bidder or offeror except to law enforcement agencies.

R2-7-B301. Solicitation

A. An agency chief procurement officer shall issue an invitation for bids at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.

B. An agency chief procurement officer shall:
   1. Advertise the procurement in accordance with A.R.S. § 41-2533(C); and
   2. At a minimum, provide written notice to the prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.

C. An agency chief procurement officer shall include the following in the solicitation:
   1. Instruction to offerors, including:
      (a) Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
      (b) The deadline date for requesting a substitution or exception to the solicitation;
      (c) The manner by which the offeror is required to acknowledge amendments;
      (d) The minimum required information in the offer;
      (e) The specific requirements for designating trade secrets and other proprietary information as confidential;
      (f) Any specific responsibility criteria;
      (g) Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
      (h) Any evaluation criteria;
      (i) A statement of where documents incorporated by reference are available for inspection and copying;
      (j) A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
      (k) Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
      (l) Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;

(m) That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;

(n) Any bid security required;

(o) The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;

(p) Any designation of the specific bid items and amounts to be recorded at offer opening; and

(q) Any other offer submission requirements;

2. Specifications, including:
   (a) Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
   (b) If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
   (c) Any other specification requirements;
3. Terms and Conditions, including:
   (a) Whether the contract will include an option for extension; and
   (b) Any other contract terms and conditions.

R2-7-B302. Pre-offer Conferences

An agency chief procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be a reasonably sufficient time prior to the offer due date and time. Statements made during a pre-offer conference are not amendments to the solicitation.

R2-7-B303. Solicitation Amendment

A. An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
   1. Make changes in the solicitation;
   2. Correct defects or ambiguities;
   3. Provide additional information or instructions; or
   4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.

B. If a solicitation is changed by a solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.

C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

R2-7-B304. Modification or Withdrawal of Offer Before Offer Due Date and Time

A. An offeror may modify or withdraw its offer, in writing, before the offer due date and time.
B. The agency chief procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

R2-7-B305. Cancellation of a Solicitation Before Offer Due Date and Time

A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.
B. The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
C. The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after 30 days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

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

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

R2-7-B307. Late Offers, Modifications, Withdrawals

A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late.
B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
    1. The document is received before the contract award at the location designated in the solicitation; and
    2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
    1. If the document is hand delivered, refuse to accept delivery; or

2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.

D. The agency chief procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

R2-7-B308. Cancellation of Solicitation After Receipt of Offers and Before Award

A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
B. The agency chief procurement officer shall notify offerors of the cancellation in writing.
C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential pursuant to R2-7-103.
D. In the event of cancellation, the agency chief procurement officer shall promptly return any bid security provided by an offeror.

R2-7-B309. One Offer Received

If only one offer is received in response to a solicitation, the agency chief procurement officer shall review the offer and either:

1. Award the contract to the offeror and prepare a written determination that:
    a. The price submitted is fair and reasonable under R2-7-702,
    b. The offer is responsive, and
    c. The offeror is responsible, or
2. Reject the offer and:
    a. Resolicit for new offers,
    b. Cancel the procurement, or
    c. Use a different source selection method authorized under the Arizona Procurement Code.

R2-7-B310. Offer Mistakes Discovered After Offer Opening and Before Award

A. If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, an agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
    1. Confirm that no mistake was made and assert that the offer stands as submitted; or

2. Acknowledge that a mistake was made, and include all of the following in a written response:
   (a) Explanation of the mistake and any other relevant information;
   (b) A request for correction including the corrected offer or a request for withdrawal; and
   (c) The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
   1. Explanation of the mistake and any other relevant information;
   2. A request for correction including the corrected offer or a request for withdrawal; and
   3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

C. An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.

D. An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.

E. An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.

F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the agency chief procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

R2-7-B311. Extension of Offer Acceptance Period

A. To extend the offer acceptance period, an agency chief procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.

B. To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The agency chief procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

R2-7-B312. Bid Evaluation

A. An agency chief procurement officer shall evaluate offers to determine which offer provides the lowest cost to the state in accordance with any objectively measurable factors set forth in the solicitation.

B. An agency chief procurement officer shall consider total life cycle costs including residual value when evaluating offers for the procurement of materials or services identified in A.R.S. § 41-2554.

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

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

R2-7-B313. Responsibility Determinations

A. The agency chief procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.
B. The agency chief procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:
    1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
    2. The offeror's record of performance and integrity;
    3. Whether the offeror has been debarred or suspended;
    4. Whether the offeror is legally qualified to contract with the state;
    5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
    6. Whether the offeror meets the responsibility criteria specified in the solicitation.
C. If the agency chief procurement officer determines an offeror is nonresponsible, the agency chief procurement officer shall promptly send a determination to the offeror stating the basis for the determination. The agency chief procurement officer shall file a copy of the determination in the procurement file.
D. The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.
E. For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

R2-7-B314. Contract Award

A. An agency chief procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.
B. The agency chief procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.
C. The agency chief procurement officer shall notify all offerors of an award.
D. After a contract is awarded, the agency chief procurement officer shall return any bid security provided by the offeror.
E. Within 3 days after a contract is awarded, the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

R2-7-B315. Mistakes Discovered After Award

A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:
   1. Explanation of the mistake and any other relevant information;
   2. A request for correction including the corrected offer or a request for withdrawal; and
   3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
   1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
   2. Cancel all or part of the award; or
   3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, the agency chief procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, within 120 days from the date of award, based on the considerations of fair competition and the best interest of the state.

Multistep Sealed Bidding

R2-7-B316. Multistep Sealed Bidding

A. Multi-step sealed bidding is initiated by the issuance of an invitation to submit technical offers. An agency chief procurement officer shall issue an invitation to submit technical offers that contains all of the following information:
   1. Notice that the procurement is conducted in two phases. In phase one unpriced technical offers are considered and selected. In phase two there is competitive bidding by offerors whose offers were selected in phase one;
   2. The best description of the material or service solicited;
   3. The requirements for each technical offer, such as drawings and descriptive literature;
   4. The criteria for evaluating each technical offer;
   5. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed; and
   6. A statement that negotiations may be held regarding the unpriced technical offer.

B. An agency chief procurement officer may conduct a pre-offer conference within a reasonably sufficient time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offers. Amendments to the solicitation may be issued, if necessary, in accordance with R2-7-B303.

C. An agency chief procurement officer may amend an invitation to submit technical offers before or after submission of unpriced technical offers. The agency chief procurement officer shall notify all suppliers who received the solicitation of the amendment and specify a revised offer due date and time. These suppliers may submit new offers or revise existing offers. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an

amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

D. Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Late technical offers are not considered except under the circumstances set forth in R2-7-B307(B). The agency chief procurement officer shall not disclose the contents of an unpriced technical offer to unauthorized persons.

E. Each unpriced technical offer shall be evaluated in accordance with the criteria in the invitation to submit technical offers to determine whether the offer is acceptable, potentially acceptable, or unacceptable. If the offer is unacceptable, the agency chief procurement officer shall issue a written determination that the offer is unacceptable, state the basis for the determination, and place the determination in the procurement file. If the agency chief procurement officer determines that an offeror's unpriced technical offer is unacceptable, the agency chief procurement officer shall notify that offeror in writing of the determination and indicate in the notice that the offeror is not afforded an opportunity to amend a technical offer.

F. An agency chief procurement officer may conduct negotiations with any offeror that submits an acceptable or potentially acceptable technical offer. During negotiations, the agency chief procurement officer shall not disclose any information obtained from an unpriced technical offer to any other offeror. After negotiations, the agency chief procurement officer shall establish a closing date for receipt of final technical offers and provide written notice of the closing date to offerors that submitted acceptable or potentially acceptable offers. The agency chief procurement officer shall maintain a record of all negotiations.

G. After receipt of final technical offers, an agency chief procurement officer shall determine which technical offers are acceptable for consideration in phase two. The agency chief procurement officer shall notify in writing each offeror whose technical offer was determined unacceptable.

H. At any time during phase one, an offeror may withdraw an offer.

I. Upon completion of phase one, an agency chief procurement officer shall issue a solicitation and conduct phase two as prescribed under R2-7-B301 through R2-7-B315 as a competitive sealed bidding procurement, except that the solicitation shall be issued only to offerors that submitted acceptable technical offers in phase one.

J. An agency chief procurement officer shall ensure that unpriced technical offers of unsuccessful offerors are available for public inspection except to the extent that the offer is confidential under R2-7-B306.

Part C. Competitive Sealed Proposals

§ 41-2534. Competitive sealed proposals

A. A contract for materials or services may be entered into by competitive sealed proposals. This section does not apply to procurement of construction, construction services or specified professional services pursuant to section 41-2537, 41-2578, 41-2579 or 41-2581. Construction services shall be procured pursuant to section 41-2537, 41-2578 or 41-2579.

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

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

D. Proposals shall be opened publicly at the time and place designated in the request for proposals. The name of each offeror shall be recorded in accordance with rules adopted by the director. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall be open for public inspection after contract award. To the extent the offeror designates and the state concurs, trade secrets or other proprietary data contained in the offer documents shall remain confidential in accordance with rules adopted by the director.

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

F. As provided in the request for proposals and under rules adopted by the director, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to ensure full understanding of the solicitation requirements and to permit revision of offers. Offerors shall be accorded fair treatment with respect to any opportunity for discussion. Revisions may be permitted after submission and before award. If discussions are conducted, all offerors who have submitted proposals that are determined by the procurement officer to be reasonably susceptible to being selected for award shall be invited to submit a best and final offer. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

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

§ 41-2539. Cancellation of invitation for bids or requests for proposals

An invitation for bids, a request for proposals or other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation if it is in the best interests of this state. The reasons for the cancellation or rejection shall be made part of the contract file.

§ 41-2540. Responsibility of bidders and offerors

A. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with rules adopted by the director. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of nonresponsibility with respect to the bidder or offeror. A finding of nonresponsibility shall not be construed as a violation of the rights of any person.

B. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the office of the director or the purchasing agency without prior written consent by the bidder or offeror except to law enforcement agencies.

R2-7-C301. Solicitation

A. An agency chief procurement officer shall issue a request for proposal at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.

B. The agency chief procurement officer shall:
   1. Advertise in accordance with A.R.S. § 41-2534(C); and
   2. At a minimum, provide written notice to prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.

C. The agency chief procurement officer shall include the following in the solicitation:
   1. Instructions to offerors, including:
      a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
      b. The deadline date for requesting a substitution or exception to the solicitation;
      c. The manner by which the offeror is required to acknowledge amendments;
      d. The minimum information required in the offer;
      e. The specific requirements for designating trade secrets and other proprietary information as confidential;
      f. Any specific responsibility or susceptibility criteria;
      g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
      h. Evaluation factors and the relative order of importance;
      i. A statement of where documents incorporated by reference are available for inspection and copying;
      j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
      k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
      l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
      m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
      n. Any offer security required;
      o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
      p. Any cost or pricing data required;
      q. The type of contract to be used;

r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award; and
s. Any other offer requirements specific to the solicitation.

2. Specifications, including:
   a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
   b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
   c. Any other specification requirements specific to the solicitation.
3. Terms and Conditions, including:
   a. Whether the contract is to include an extension option; and
   b. Any other contract terms and conditions.

R2-7-C302. Pre-offer Conferences

An agency chief procurement officer may conduct may conduct one or more pre-offer conferences within a reasonable time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R2-7-B303.

R2-7-C303. Solicitation Amendment

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

R2-7-C304. Modification or Withdrawal of Offer Before Offer Due Date and Time

A. An offeror may modify or withdraw their offer at any time, in writing, before the offer due date and time.
B. The agency chief procurement officer shall place the document submitted in the procurement file as a record of the modification or withdrawal.

R2-7-C305. Cancellation of Solicitation Before Offer Due Date and Time

A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.
B. The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
C. The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after 30 days from notice of solicitation cancellation unless the offeror requests the offer be returned.

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

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

R2-7-C307. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

A. If an offer, modification, or withdrawal is not received by the offer due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late. This rule does not apply to revision or withdrawal of offers as described in R2-7-C314.
B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
    1. The document is received before contract award at the location designated in the solicitation; and
    2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:

1. If the document is hand delivered, refuse to accept the delivery; or
2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.

D. The agency chief procurement officer shall document a refusal under (C)(1) and place the document or a copy of the notice required in (C)(2) in the procurement file.

R2-7-C308. Cancellation of Solicitation After Offer Opening and Before Award

A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
B. The agency chief procurement officer shall notify offerors of the cancellation in writing.
C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer may withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the cancelled solicitation open for public inspection except for information determined to be confidential pursuant to R2-7-103.
D. In the event of cancellation, the agency chief procurement officer shall promptly return any offer security provided by an offeror.

R2-7-C309. Only One Offer Received

If only one offer is received in response to a solicitation, the agency chief procurement officer shall review the offer and either:

1. Award the contract to the offeror and prepare a written determination that:
    a. The price submitted is fair and reasonable pursuant to R2-7-702; and
    b. The offeror is responsive; and
    c. The offeror is responsible; or
2. Reject the offer and:
    a. Resolicit for new offers;
    b. Cancel the procurement; or
    c. Use a different source selection method authorized under the Arizona Procurement Code.

R2-7-C310. Extension of Offer Acceptance Period

A. To extend the offer acceptance period, an agency chief procurement officer shall notify offerors in writing of an extension and request written concurrence from all offerors.
B. To be eligible for a contract award, an offeror shall submit written concurrence to the extension. The agency chief procurement officer shall not consider the offer from an offeror who fails to respond to the notice of extension.

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

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

R2-7-C312. Responsibility Determinations

A. An agency chief procurement officer shall determine, at any time during the evaluation period and before award, that an offeror is responsible or nonresponsible.
B. The agency chief procurement officer may consider the following factors before determining that an offeror is responsible or nonresponsible:
    1. The offeror's financial, business, personnel, or other resources, including subcontractors;
    2. The offeror's record of performance and integrity;
    3. Whether the offeror has been debarred or suspended;
    4. Whether the offeror is legally qualified to contract with the state;
    5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
    6. Whether the offeror meets any responsibility criteria specified in the solicitation.
C. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is nonresponsible unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors. The agency chief procurement office shall file a copy of the determination in the procurement file.

D. The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540(B).
E. For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

R2-7-C313. Clarification of Offers

A. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.
B. The agency chief procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.
C. The agency chief procurement officer shall retain any clarifications in the procurement file.

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

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

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

A. An agency chief procurement officer may request written revisions to an offer. The agency chief procurement officer shall include in the written request:
    1. The date, time, and place for submission of offer revisions; and
    2. A statement that if offerors do not submit a written notice of withdrawal or a written offer revision, their immediate previous written offer will be accepted as their final offer.
B. An agency chief procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted. The agency chief procurement officer shall include in the written request:

1. The date, time, and place for submission of best and final offer; and
2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.

C. The agency chief procurement officer shall request written best and final offers only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.

D. If an apparent mistake, relevant to the award determination, is discovered after opening of best and final offers, the agency chief procurement officer shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include the following in a written response:
    a. Explanation of the mistake and any other relevant information,
    b. A request for correction including the corrected offer or a request for withdrawal, and
    c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

E. An offeror who discovers a mistake in their best and final offer may request withdrawal or correction in writing, and shall include the following in the written request:

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

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

R2-7-C316. Evaluation of Offers

A. An agency chief procurement officer shall evaluate offers and best and final offers based on the evaluation criteria contained in the request for proposals. The agency chief procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.

B. An agency chief procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the agency chief procurement officer. This evaluation report shall supersede all previous draft evaluations or evaluation reports. The agency chief procurement officer may:

1. Accept or reject the findings of the evaluation committee,
2. Request additional information from the evaluation committee, or

3. Replace the evaluation committee.

C. The agency chief procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

R2-7-C317. Contract Award

A. An agency chief procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the state based on the evaluation factors set forth in the solicitation. The agency chief procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.

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

C. After contract award, the agency chief procurement officer shall return any offer security provided by the offeror.

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

R2-7-C318. Mistakes Discovered After Award

A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in their written request:
   1. Explanation of the mistake and any other relevant information;
   2. A request for correction including the corrected offer or a request for withdrawal; and
   3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
   1. Allow correction of the mistake;
   2. Cancel all or part of the award; or
   3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, the agency chief procurement officer may award all or part of the contract to the next responsible offeror, within 120 days of contract award, whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

Part D. Procurements Not Exceeding the Amount Prescribed in A.R.S. §41-2535

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

A. Any procurement that does not exceed the aggregate dollar amount of one hundred thousand dollars may be made in accordance with rules adopted by the director, except that the procurements shall be made with such competition as is practicable under the circumstances.

B. Any procurement that does not exceed the aggregate dollar amount of less than one hundred thousand dollars shall be restricted, if practicable, to small businesses as defined in rules adopted by the director. The procurement officer shall rotate the small business solicited to compete for any procurement of less than one hundred thousand dollars. If it is impracticable to restrict a particular procurement to small businesses, the procurement officer shall make a determination setting forth the reasons and place it in the contract file.

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

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

1. A list be maintained of persons who desire to receive solicitations to bid on construction projects to which additions shall be permitted throughout the year.
2. The list of persons be available for public inspection.
3. Agreements for construction be on forms approved by the director.
4. All information submitted by bidders pursuant to this section be confidential according to section 41-2533, subsection D.
5. All bids for construction be opened at a public opening.
6. All persons desiring to submit bids be treated equitably and the information related to each project be available to all eligible persons.
7. Competition for construction projects under the simplified construction procurement program be encouraged to the maximum extent possible.

R2-7-D301. Applicability

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

1. The purchase can be made from a state or agency contract;
2. The purchase can be made from a set-aside organization as established in Article 10;
3. The purchase is not expected to exceed $10,000.00;
4. The agency chief procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.

R2-7-D302. Solicitation - Request for Quotation

A. A request for quotation shall be issued for purchases estimated to exceed $10,000 but less than that specified in A.R.S. § 41-2535. The agency chief procurement officer shall include the following in the solicitation:
   1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
   2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
   3. The minimum information that the offer shall contain;
   4. Any evaluation factors;
   5. Whether negotiations may be held;
   6. Any contract options including renewal or extension;
   7. The uniform terms and conditions by text or reference; and
   8. Any other terms, conditions, or instructions specific to the procurement.

B. The agency chief procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses registered on the prospective suppliers list.

C. The request for quotation shall include a statement that only a small business, as defined in R2-7-101, shall be awarded a contract, unless any of the following apply:
   1. The purchase has been unsuccessfully competed under Subsection (B) of this Section, including failure to obtain fair and reasonable prices;
   2. The agency chief procurement officer has made a written determination that less than three small businesses are registered on the prospective suppliers list; or
   3. The agency chief procurement officer has made a written determination prior to issuing a request for quotation that restricting the procurement to small business is not practical under the circumstances.

R2-7-D303. Contract Award

A. If only one responsive offer is received, the agency chief procurement officer shall determine if the price is fair and reasonable, and in the best interest of the state to award a contract and place the determination in the procurement file. If time permits, the agency chief procurement officer may initiate a second request for quotation if it is reasonable to believe that additional responses will be received.

B. The agency chief procurement officer shall award a contract to the small business determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation. If award is pursuant to R2-7-D302(C), the agency chief procurement officer shall award a contract to the offeror determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation.

C. The agency chief procurement officer shall place the written basis for the award in the procurement file.

D. The agency chief procurement officer shall make the procurement file available to the public on the date of contract award, except for those items considered confidential under R2-7-103.

R2-7-D304. Purchases of $10,000 and Less

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

Part E. Limited Competition for Procurements Exceeding the Amount Prescribed in A.R.S. §41-2535

§ 41-2536. Sole source procurement

A contract may be awarded for a material, service or construction item without competition if the director determines in writing that there is only one source for the required material, service or construction item. The director may require the submission of cost or pricing data in connection with an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination of the basis for the sole source procurement shall be included in the contract file.

R2-7-E301. Sole Source Procurements

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

E. If the sole-source procurement is authorized or approved, the agency chief procurement officer shall negotiate a contract advantageous to the state.
F. The agency chief procurement officer shall keep a record of all sole-source procurements pursuant to A.R.S. § 41-2551.

Emergency/Competition Impracticable Procurement

§ 41-2537. Emergency procurements

Notwithstanding any other provision of this chapter, the director may make or authorize others to make emergency procurements if there exists a threat to public health, welfare or safety or if a situation exists which makes compliance with section 41-2533, 41-2534, 41-2578, 41-2579 or 41-2581 impracticable, unnecessary or contrary to the public interest as defined in rules adopted by the director, except that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

R2-7-E302. Emergency Procurements

A. For the purposes of Section, the term "emergency" means any condition creating an immediate and serious need for materials, services, or construction in which the state's best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of state government, the preservation or protection of property, or the health or safety of a person.
B. This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The agency chief procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.
C. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit the written request for, or notification of, the emergency procurement to the state procurement administrator. The request shall include the following information:
    1. A description of the procurement need and the reason for the emergency;
    2. The name of the supplier;
    3. The duration and estimated total dollar value of the procurement; and
    4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702.
D. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with an emergency procurement. The state procurement administrator shall either:
    1. Issue written approval, with any conditions or restrictions;
    2. Request additional information from the agency chief procurement officer; or
    3. Deny the request.
E. An employee acting within the authority of a using agency may proceed with an emergency procurement without approval from the state procurement administrator if the emergency

necessitates immediate response and it is impracticable to contact the state procurement administrator. The agency chief procurement officer shall submit a written confirmation of the emergency procurement to the state procurement administrator within five working days of the emergency.

F. A using agency making an emergency procurement shall limit the procurement to such actions necessary to address the emergency.

G. A using agency making an emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the state.

H. The agency chief procurement officer shall keep a record of all emergency procurements pursuant to A.R.S. § 41-2551.

R2-7-E303. Competition Impracticable Procurements

A. For the purposes of this Section, "competition impracticable" means a procurement requirement exists which makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R2-7-E302. Procurements with a documented lack of available vendors in the marketplace and which require an open and continuous availability of offerors may be procured by this method.

B. An agency chief procurement officer seeking a competition impracticable procurement shall obtain the approval of the state procurement administrator before proceeding. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202.

C. The agency chief procurement officer shall submit a written request for approval containing the following:

    1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest;
    2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
    3. An explanation of why the proposed procurement process is advantageous to the state; and
    4. The scope, duration, and estimated total dollar value of the procurement need.

D. The state procurement administrator shall:

    1. Issue written approval, with any conditions or restrictions;
    2. Request additional information from the agency chief procurement officer; or
    3. Deny the request.

E. Before modifying the scope, duration, or cost of an approved competition impracticable procurement, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.

F. The agency chief procurement officer shall keep a record of all competition impracticable procurements as required by A.R.S. § 41-2551.

Part F. Competitive Selection Process for Services of Clergy, Physicians, Dentists, Legal Counsel, or Certified Public Accountants

§ 41-2538. Competitive selection procedures for certain professional services

A. The services specified in section 41-2513 shall be procured in accordance with this section, except as authorized under section 41-2535, 41-2536 or 41-2537.

B. Persons engaged in providing the types of services specified in section 41-2513 may submit statements of qualifications and expressions of interest in providing such types of services. The director may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

C. Adequate notice of the need for such services shall be given by the purchasing agency through a request for proposals. The request for proposals shall describe the services required and list the type of information and data required of each offeror.

D. The head of the purchasing agency or a designee of such officer may conduct discussions with any offerors who submit a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

E. The award shall be made to the offeror determined in writing by the head of the purchasing agency or a designee of such officer to be best qualified based on the evaluation factors set forth in the request for proposals and after a written determination that the compensation is fair and reasonable. Selection may be made pursuant to the provisions of this section without requiring priced proposals, but if price is included in proposals submitted, no contract may be awarded solely on the basis of price.

R2-7-F301. Statement of Qualifications

A. The agency chief procurement officer may request that persons desiring to provide the services specified in A.R.S. § 41-2513 submit statements of qualifications on a prescribed form which shall include, but not be limited to the following information:

1. Technical education and training;
2. General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards; and
3. Any other relevant information requested by the purchasing agency.

B. Persons who have submitted statement of qualifications may submit additional information or change information that was previously submitted at any time.

C. The agency chief procurement officer may, in lieu of subsection (A), incorporate the statement of qualifications as part of the solicitation pursuant to R2-7-F302.

R2-7-F302. Solicitation

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

B. For procurements exceeding the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall follow the procedures below, except as authorized under A.R.S. §§ 41-2536 or 41-2537:

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

R2-7-F303. Solicitation Amendment

A. The agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:

1. Make changes in the solicitation;
2. Correct defects or ambiguities;

3. Provide additional information or instructions; or
4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.

B. If a solicitation is changed by a written solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.

C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

R2-7-F304. Cancellation of Solicitation

A. Based on the best interest of the state, the agency chief procurement officer may cancel a solicitation at any time before award.

B. Based on the best interest of the state, the agency chief procurement officer may cancel an open and continuous solicitation at any time during the active period of the solicitation. Contracts that have already been awarded in accordance with the solicitation shall not be affected by the cancellation.

C. The agency chief procurement officer shall notify offerors of the cancellation in writing.

D. The agency chief procurement officer shall return any offers received to the offerors.

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

A. The agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.

B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.

C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall announce and record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.

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

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

A. An authorized representative of an offeror may withdraw an offer in writing if the written request for withdrawal is received by the agency chief procurement officer before the designated offer due date and time or the designated, continuous offer due day and time.

B. An offeror may withdraw or modify an offer at any time before the due date and time or designated, continuous day and time for offer opening and before contract award by submitting a written request to the agency chief procurement officer.

C. If a modification or a withdrawal is not received by the designated offer due date and time or the designated, continuous day and time for offer opening, the agency chief procurement officer shall determine the modification or withdrawal as late. The agency chief procurement officer shall reject a late modification or withdrawal unless:
   1. The document is received before the contract award; and
   2. The document would have been received by the designated offer due date and time or the designated, continuous day and time for offer opening but for the action or inaction of state personnel directly serving the purchasing agency.

D. Upon receiving a late modification or withdrawal, the procurement officer shall:
   1. If the document is hand delivered, refuse to accept delivery; or
   2. If the document is not hand delivered, record the time and date of receipt, and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.

E. The agency chief procurement officer shall document a refusal under (D)(1) and place this document or a copy of the notice required in (D)(2) in the procurement file.

R2-7-F307. Late Offers

A. If a specific offer due date and time has been identified in the solicitation, the agency chief procurement officer shall reject any offer received after the specified offer due date and time.
   1. It was transmitted through an eProcurement system designated in the solicitation, and the offer has a submitted status in the system prior to the offer due date and time; or
   2. There is evidence to establish that the hand-delivered offer was received before contract award at the location designated in the solicitation and would have been received by the offer due date and time but for the failure of state personnel directly serving the purchasing agency.

B. Upon receiving a late offer, the agency chief procurement officer shall:
   1. If the document is hand delivered, refuse to accept the delivery; or
   2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.

C. The agency chief procurement officer shall document a late offer in the procurement file; with as much information as available.

D. If the solicitation has a designated, continuous day and time for offer opening and an offer is received after the day and time for offer opening, the agency chief procurement officer shall accept and log in the offer for the next scheduled day and time for offer opening.

R2-7-F308. Negotiations with Offerors

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

R2-7-F309. Contract Award

A. The agency chief procurement officer shall award the contract to the offeror best qualified based on the evaluation factors set forth in the request for proposal and after making a written determination that the price is fair and reasonable. The agency chief procurement officer shall not award a contract based solely on price.
B. The agency chief procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
C. The agency chief procurement officer shall award contracts pursuant to A.R.S. § 41-2513(B) through (D) where applicable.
D. Within 3 days after contract award the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

R2-7-F310. Mistakes Discovered After Award

A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
    1. Explanation of the mistake and any other relevant information;
    2. A request for correction including the corrected offer or a request for withdrawal; and
    3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
    1. Allow correction of the mistake;
    2. Cancel all or part of the award; or
    3. Deny correction or withdrawal.
C. After cancellation of all or part of an award, the agency chief procurement officer may award all or part of the contract to the next responsible offeror, within 120 days of contract award, based on whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

Part G. Other Source Selection
Request for Information

§ 41-2555. Request for information

The procurement officer may issue a request for information to obtain data about services or materials available to meet a specific need. Adequate public notice as specified in section 41-2533 shall be provided.

R2-7-G301. Request for Information

An agency chief procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. Information contained in a response to a request for information shall be considered confidential until the procurement process is concluded or two years, whichever occurs first unless authorized by the state procurement administrator.
3. There is no required format to be used for requests for information.

Demonstration Projects

§ 41-2556. Demonstration projects

A. A demonstration project may be undertaken if the director determines in writing that the project is innovative and unique. This state shall not be obligated to pay the contractor, or to procure or lease the services or materials supplied by the contractor. However, on the written request and justification by the agency and written determination by the director that it is in the best interest of this state, this state may pay the contractor for the demonstration project. The contract term shall not exceed two years. A request and written determination of the basis for the contract award shall be included in the contract file.

B. A contract to procure or lease services or materials previously supplied during a demonstration project shall be conducted under this article.

C. Except as otherwise provided by law, a contractor for a demonstration project shall not be precluded from participating as a bidder or offeror in a procurement for the services or materials supplied during a demonstration project.

R2-7-G302. Demonstration Projects

A. An agency chief procurement officer shall submit a written request to the state procurement administrator to award a contract for a demonstration project. The written request shall contain the following:
    1. Name of the agency or agencies;
    2. Name of the contractor;
    3. Description of the project, including unique and innovative features of the project;
    4. Statement and explanation that the project is in best interest of the state;
    5. Duration of the project; and
    6. Proposed contract terms and conditions.

B. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with a demonstration project. The state procurement administrator shall either:
   1. Issue written approval, with any conditions or restrictions;
   2. Request additional information from the agency chief procurement officer; or
   3. Deny the request.

C. Demonstration projects shall be provided by the contractor at no cost, and the state shall not be obligated to purchase or lease the services or materials from the contractor.

D. The agency chief procurement officer may submit a written request to the state procurement administrator to purchase or lease from the demonstration contractor. The written request shall be submitted within 12 months after the demonstration project begins or within 12 months after the demonstration project ends and contain the following:
   1. Name of the agency or agencies;
   2. Name of the contractor;
   3. Description of the project, including unique and innovative features of the project;
   4. Statement and explanation that lease or purchase is in best interest of the state;
   5. Cost to the state;
   6. Duration of the proposed contract; and
   7. Proposed contract terms and conditions.

E. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with purchasing or leasing from the demonstration contractor. The state procurement administrator shall:
   1. Issue written approval, with any conditions or restrictions;
   2. Request additional information from the agency chief procurement officer; or
   3. Deny the request.

F. The term of the contract resulting from a demonstration project shall not exceed two years.

Unsolicited Proposals

§ 41-2557. Unsolicited proposals

A contract may be awarded based on an unsolicited proposal only if the director determines in writing that the conditions of either section 41-2536 or 41-2537 exist. The determination shall include all of the following:

1. The proposal is innovative and unique.
2. The proposal is not available without restriction from another source and does not closely resemble a similar product which is either available or pending in the industry.
3. The technical office of the purchasing agency receiving the proposal has sufficiently supported its recommendations with facts and circumstances that preclude competition.
4. The procurement officer has approved in writing the award of a contract based on the unsolicited proposal.

R2-7-G303. Unsolicited Proposals

A. An unsolicited proposal shall be a proposal that is submitted at the initiative of the offeror, and not in response to a solicitation.
B. An unsolicited proposal shall be submitted in writing and in sufficient detail for the agency chief procurement officer to understand the proposal.
C. An unsolicited proposal shall not be an advance offer to a known state requirement.
D. An agency chief procurement officer shall submit a written request to the state procurement administrator to award a contract resulting from an unsolicited proposal. The written request shall contain the following:
    1. Name of the agency or agencies;
    2. Name of the contractor;
    3. Description of the project, including unique and innovative features of the project;
    4. Statement and explanation that project is in best interest of the state;
    5. Duration of the project; and
    6. Proposed contract terms and conditions.
E. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with an unsolicited proposal. The state procurement administrator shall:
    1. Issue written approval, with any conditions or restrictions;
    2. Request additional information from the agency chief procurement officer; or
    3. Deny the request.

General Services Administration Contracts

§ 41-2558. General services administration contracts

Notwithstanding sections 41-2533 and 41-2534, the director or the director's designee may evaluate general services administration contracts for materials and services. The director or the director's designee may authorize a purchasing agency to make purchases under a contract approved by the director or the director's designee without complying with the requirements prescribed in section 41-2533 or 41-2534 if the director or the director's designee determines all of the following apply:

1. The price is equal to or less than the contractor's current federal supply contract price.
2. The contractor has indicated in writing that the contractor is willing to extend the current federal supply contract pricing, terms and conditions.
3. The purchase order adequately identifies the federal supply contract on which the order is based.
4. It is cost-effective and in the best interests of this state.

R2-7-G304. General Services Administration Contracts

A. An agency chief procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:
    4. Use of the GSA contract or schedule is cost effective and in the best interest of the state;
    5. Price is equal to or less than the contractor's current GSA price;
    6. Price is fair and reasonable;
    7. Contractor is willing to offer GSA pricing and terms to the state;

8. Comparable products or services are not available under a state or agency contract;
9. Comparable products or services are not restricted under a set-aside contract; and
10. Contractor accepts required state contract terms and conditions.

B. An agency chief procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the state. The determination shall contain the following:
   1. Name of the contractor;
   2. GSA contract or schedule number;
   3. Procurement description;
   4. Analysis of price, quality, and other relevant factors; and
   5. Statement that the price is fair and reasonable.

Public-Private Partnership Contracts

§ 41-2559. Public-private partnership contracts

A. The director may enter into public-private partnership contracts to finance the technology needs of the purchasing agency. The funding for services under a public-private partnership contract entered into pursuant to this section shall be contingent on and computed according to established performance standards and shall be attributable to the successful implementation of the technology program for the period specified in the contract. The director may issue requests for information and requests for proposals to solicit private partners that are interested in providing programs under a contract entered into pursuant to this section.

B. Each request for proposals issued pursuant to this section shall require each private partner to propose specific performance improvements and measurement approaches to be used to measure the value delivered by the vendor technology solution. The director shall include an assessment of the proposed value of the vendor technology solution in its evaluation criteria to select the best value solution for the purchasing agency.

C. A contract entered into between the director and an automated systems vendor shall provide for payment of fees on a contractually specific amount based on the achievement of measured performance improvements that are mutually agreed to by the contractor and the director and monies for payment of these fees are not subject to legislative appropriation. The following are subject to review and approval by the director:
   1. The terms of contracts entered into pursuant to this section relating to the measurement of the performance improvement attributable to the vendor technology program.
   2. Payment of fees based on the achievement of the established performance measures.

D. Before a public-private partnership contract is awarded pursuant to this section, the joint legislative budget committee staff shall be consulted with regard to the potential fiscal impact of the contract to the state. If the joint legislative budget committee staff finds a significant negative fiscal impact to the state, the staff shall report its findings to the joint legislative budget committee.

R2-7-G305. Public-Private Partnership Contracts

A. As referenced in this Article, a public-private partnership contract is a government contract and not a partnership. The government shall not jointly own or share property with the contractor and the government shall not be responsible for the contractor's liabilities.
B. An agency chief procurement officer shall submit a written request to the state procurement administrator to enter into a public-private partnership contract. The written request shall contain the following:
    1. Name of the agency or agencies;
    2. Name of the contractor;
    3. Description of the public-private partnership, including obligations of the agency and the contractor;
    4. Statement and explanation that the project is in best interest of the state;
    5. Proposed contract price and assessment of the proposed value;
    6. Description of the proposed performance measurement criteria and methods;
    7. Duration of the project; and
    8. Proposed contract terms and conditions.
C. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with a public-private partnership. The state procurement administrator shall either:
    1. Issue written approval, with any conditions or restrictions;
    2. Request additional information from the agency chief procurement officer; or
    3. Deny the request.
D. If the request is approved, the contract shall be awarded in accordance with A.R.S. §§ 41-2533, 41-2534, 41-2535, 41-2536, or 41-2537.
E. The using agency is responsible for obtaining all necessary approvals, including approvals from the Government Information Technology Agency and Joint Legislative Budget Committee, before entering into a public-private partnership contract.

Procurement of Earth Moving, Material Handling, Road Maintenance and Construction Equipment

§ 41-2554. Procurement of earth moving, material handling, road maintenance and construction equipment; definitions

A. Notwithstanding the criteria for contract award prescribed in section 41-2533, a contract for earth moving, material handling, road maintenance and construction equipment shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids, which shall include as price evaluation criteria the total life cycle cost including residual value of the earth moving, material handling, road maintenance and construction equipment and such other additional evaluation factors set forth in the invitation for bids. No factors or criteria may be used in the evaluation of bids for earth moving, material handling, road maintenance and construction equipment, other than those specified in the invitation for bid. Additional evaluation factors shall include, to the extent practicable, outright purchase. The contract award shall be based on the price evaluation criteria

deemed by the state to be most advantageous to the state. Procedures for awarding contracts for earth moving, material handling, road maintenance and construction equipment pursuant to this subsection shall be the same as those prescribed in section 41-2533.

B. Notwithstanding the criteria for contract award prescribed in section 41-2534, a contract for earth moving, material handling, road maintenance and construction equipment shall be awarded to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state. The evaluation factors set forth in the request for proposals shall include the total life cycle cost including residual value of each proposal and such other additional evaluation factors set forth in the request for proposals. No factors or criteria may be used in the evaluation of proposals for earth moving, material handling, road maintenance and construction equipment, other than those specified in the request for proposal. Additional evaluation factors set forth in the request for proposal shall include, to the extent practicable, outright purchase. The contract award shall be based on the price evaluation criteria deemed by the state to be most advantageous to the state. Procedures for awarding contracts for earth moving, material handling, road maintenance and construction equipment pursuant to this subsection shall be the same as those prescribed in section 41-2534.

C. The minimum unit list price for earth moving, material handling, road maintenance and construction equipment shall be adjusted annually by the consumer price index, United States average.

D. As used in this section:

1. "Earth moving, material handling, road maintenance, and construction equipment" means a track-type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel loader or track loader, having a published manufacturer's minimum unit list price of fifty thousand dollars or more and a minimum expected life cycle of three years.
2. "Outright purchase" means the initial cost to the state for the earth moving, material handling, road maintenance, and construction equipment, including all vendor charges and financing costs.
3. "Residual value" means the guaranteed minimum market value of the earth moving, material handling, road maintenance and construction equipment at the end of the life cycle of the earth moving, material handling, road maintenance and construction equipment being procured, as determined by a guaranteed minimum value offered by the vendor or other parties in its bid.
4. "Total life cycle cost" means total state costs and financing costs through the life cycle of the earth moving, material handling, road maintenance and construction equipment being purchased less residual value.
5. "Total state costs" means cost to the state for the earth moving, material handling, road maintenance and construction equipment including repair costs, present value of monies, vendor charges, and all other identifiable state costs that may be incurred.

6. "Vendor charges" means costs of all vendor support, materials, transportation and all other identifiable costs associated with the vendor's proposal or bid.
7. "Vendor support" means services provided by the vendor for items such as consulting, education and training.

Article 4 Specifications

§ 41-2561. Definition

As used in this article, "specification" means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery.

§ 41-2562. Duties of the director

A. The director shall establish guidelines governing the preparation, maintenance and content of specifications for materials, services and construction required by this state. The director shall prepare, issue, revise, maintain and monitor the use of specifications for materials, services and construction required by this state.
B. Notwithstanding the provisions of section 41-2501, all procurement solicitations for volatile organic compound containing commodities shall include a request for substitute commodities with lower or no volatile organic content. Substitute products shall not have increased toxicity compared to the original commodity.

§ 41-2563. Exempted services

Specifications for services procured under section 41-2513 may be prepared by a purchasing agency in accordance with this article and rules adopted under this article.

§ 41-2564. Relationship with using agencies

The director may obtain advice and assistance from using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and use its own specifications.

§ 41-2565. Maximum practicable competition

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying this state's needs and shall not be unduly restrictive.

§ 41-2566. Specifications prepared by architects and engineers

All specifications, including those prepared by architects, engineers, consultants and others for public contracts, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying this state's needs and shall not be unduly restrictive.

§ 41-2567. Specifications for energy consumptive material

In conjunction with the governor's office of energy policy, the director shall establish specifications based on considerations of energy conservation for the procurement of selected energy consumptive material.

§ 41-2568. Specifications for recycled materials

To the extent practicable, specifications shall emphasize functional or performance criteria which do not discriminate against the use of recycled materials.

R2-7-401. Preparation of Specifications

A. State governmental units may prepare and utilize specifications only under the authority delegated by the state procurement administrator under R2-7-202.
B. An agency chief procurement officer delegated the authority to prepare and utilize specifications shall comply with the requirements of A.R.S. § 41-2561 through A.R.S. § 41-2568 and ensure specifications used support maximum practical competition.
C. The agency chief procurement officer may contract for the preparation of specifications with persons other than state personnel.
D. Notwithstanding the provisions of this Section, the state procurement administrator retains the authority to prepare, issue, revise, and monitor all specifications and plans.
E. If a mandatory specification has been designated by the state procurement administrator for a particular material, service, or construction item, it shall be used unless the state procurement administrator makes a written determination that its use is not advantageous to the state and that another specification may be used.

R2-7-402. Utilization of Specifications

The agency chief procurement officer may use any type of specification that describes the procurement requirement and promotes competition, except that the agency chief procurement officer shall not use proprietary or restrictive specifications without the prior written approval of the state procurement administrator.

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

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

R2-7-404. Conflict of Interest

A. No person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the utilization of those specifications, plans or scopes of work.
B. The state procurement administrator may waive the restriction set forth in subsection (A) of this Section if the state procurement administrator determines in writing that the rule's application would not be in the state's best interest. The determination shall state the specific reasons that the restriction in subsection (A) of this Section has been waived.

Article 5 Procurement of Construction and Specific Professional Services

§ 41-2571. Definitions

As used in this article:

1. "Architect services", "engineer services", "land surveying services", "assayer services", "geologist services" and "landscape architect services" means those professional services within the scope of the practice of those services as provided in title 32, chapter 1, article 1.
2. "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

§ 41-2572. Construction by state employees; construction by inmates of public institution

A. A building, structure, addition or alteration of a public facility may be constructed by employees or force account, if the cost does not exceed twenty thousand dollars.
B. A building, structure, addition or alteration at a public institution may be constructed by inmates if such work is determined to be advantageous to this state.

§ 41-2573. Bid security

A. As a guarantee that the contractor will enter into a contract, bid security is required for all construction procured pursuant to section 41-2533 and all construction services procured pursuant to section 41-2578, subsection F or section 41-2579, subsection F if the purchasing agency estimates that the budget for construction, excluding the cost of any finance services, maintenance services, operations services, design services, preconstruction services or other related services included in the contract, will be more than the amount established by section 41-2535, subsection D. Bid security shall be a certified check, cashier's check or surety bond.
B. Bid security shall be submitted in the following amounts:
    1. For design-bid-build construction services, ten per cent of the contractor's bid.
    2. For design-build construction services awarded by competitive sealed proposals pursuant to section 41-2578, subsection F, ten percent of the purchasing agency's construction budget for the project as stated in the request for proposals, excluding finance services, maintenance services, operations services, design services, preconstruction services or any other related services included in the contract.
    3. For job-order-contracting construction services awarded by competitive sealed proposals pursuant to section 41-2578, subsection F or section 41-2579, subsection F, the amount prescribed by the purchasing agency in the request for proposals, but not more than ten

per cent of the purchasing agency's reasonably estimated budget for construction that the purchasing agency believes is likely to actually be done during the first year under the contract, excluding any finance services, maintenance services, operations services, design services, preconstruction services or other related services included in the contract.

C. Nothing in this section prevents a state governmental unit from requiring such bid security in relation to any construction contract. The surety bond shall be executed and furnished as required by title 34, chapter 2 or chapter 6, as applicable, and the conditions and provisions of the surety bond regarding the surety's obligations shall follow the form required by section 34-201 or 34-608, as applicable.

D. If the invitation for bids or request for proposals requires security, noncompliance requires that the bid be rejected unless, pursuant to rules, it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.

E. After the bids or proposals are opened, they are irrevocable for the period specified in the invitation for bids or request for proposals, except as provided in section 41-2533, subsection F, section 41-2578, subsection F and section 41-2579, subsection F. If a bidder is permitted to withdraw its bid before award, no action may be had against the bidder or the bid security.

R2-7-506. Bid Security

A. The agency chief procurement officer shall include the bid security requirements of A.R.S. § 41-2573 in the solicitation.

B. If an offeror fails to submit the bid security required by A.R.S. § 41-2573 with the offer, the agency chief procurement officer shall reject the offer.

C. The offeror shall submit bid security in one of the following forms:

1. An annual or one-time surety bond executed solely by a surety company authorized to transact surety business in this state, issued by the Director of the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1, and in a format prescribed by A.R.S. § 41-2573 and this Section; or
2. A certified or cashier check.

D. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, may issue a written determination to accept the bid security if the bid security fails to comply in a nonsubstantial manner when:

1. Only one offer is received and there is not sufficient time to re-solicit;
2. The amount of the bid security submitted, although less than the amount required by the solicitation, is equal to or greater than the difference between the apparent low offer and the next higher acceptable offer; or
3. The bid security is inadequate as a result of correcting or modifying an offer in accordance with R2-7-B310, if the offeror increases the amount of the security to required limits within two days after notification.

E. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, shall determine if the bid security may be released without penalty under § 41-2573(E).

§ 41-2574. Contract performance and payment bonds

A. The following bonds or security is required and is binding on the parties to the contract if the value of a construction award exceeds the amount established by section 41-2535:

1. A performance bond that is executed and furnished as required under title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount equal to one hundred per cent of the price specified in the contract conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract, except that:

   (a) For job-order-contracting construction services, the performance bond shall cover the full amount of construction under the job-order-contracting construction services contract, shall not include any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract, may be a single bond for the full term of the contract, a separate bond for each year of a multiyear contract or a separate bond for each job order, as determined by the purchasing agency, and, if a single bond for the full term of the contract or a separate bond for each year of a multiyear contract, shall initially be based on the purchasing agency's reasonable estimate of the amount of construction that the purchasing agency believes is likely to actually be done during the full term of the contract or during the particular year of a multiyear contract, as applicable.

   (b) For construction-manager-at-risk construction services and design-build construction services, the amount of the performance bond shall be the price of construction and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services and other related services included in the contract. This bond is solely for the protection of this state. The conditions and provisions of the performance bond regarding the surety's obligations shall follow the form required under section 34-222, subsection G or section 34-610, subsection G, as applicable.

2. A payment bond that is executed and furnished as required by title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount equal to one hundred per cent of the price specified in the contract for the protection of all persons supplying labor or material to the contractor or its subcontractors for the performance of the construction provided for in the contract, except that:

   (a) For job-order-contracting construction services, the payment bond shall cover the full amount of construction under the job-order-contracting construction services contract, shall not include any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract, may be a single bond for the full term of the contract, a separate bond for each year of a multiyear contract or a separate bond for each job order, as determined by the purchasing agency, and, if a single bond for the full term of the contract or a separate bond for each

year of a multiyear contract, shall initially be based on the purchasing agency's reasonable estimate of the amount of construction that the purchasing agency believes is likely to actually be done during the full term of the contract or during the particular year of a multiyear contract, as applicable.

(b) For construction-manager-at-risk construction services and design-build construction services, the amount of the payment bond shall be the price of construction and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract. The conditions and provisions of the payment bond regarding the surety's obligations shall follow the form required under section 34-222, subsection F or section 34-610, subsection F, as applicable.

B. For design-bid-build construction, the bonds prescribed in subsection A of this section shall be provided on and at the same time as execution of the construction contract. For construction-manager-at-risk, design-build and job-order-contracting construction services, the bonds prescribed in subsection A of this section shall be provided only on and at the same time as execution of a contract or an amendment to a contract that commits the contractor to provide construction for a fixed price, guaranteed maximum price or other fixed amount within a designated time frame.

C. If the prime contract or specifications require any persons supplying labor or materials in the prosecution of the work to furnish payment or performance bonds, these bonds shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the director of the department of insurance pursuant to title 20, chapter 2, article 1. Notwithstanding the provisions of any other statute, the bonds shall not be executed by an individual surety or sureties, even if the requirements of section 7-101 are satisfied.

R2-7-508. Performance and Payment Bonds

A. The agency chief procurement officer shall ensure that performance and payment bonds are executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1 and in a format prescribed by A.R.S. § 41-2574.

B. The contractor shall submit to the state the performance bond and the payment bond upon request of the agency chief procurement officer. If a contractor fails to deliver the required performance bond or payment bond by the designated date, the contractor's offer shall be rejected, its bid security shall be enforced, and award of the contract shall be made as prescribed in this Chapter.

§ 41-2576. Contract payment retention; partial payment

A. Ten per cent of all construction contract payments shall be retained by this state as insurance of proper performance of the contract or, at the option of the contractor, a substitute security may be

provided by the contractor in an authorized form pursuant to rules adopted by the director. The contractor is entitled to all interest from any such substitute security.

B. When the contract is fifty per cent completed, one-half of the amount retained or securities substituted pursuant to this section shall be paid to the contractor upon the contractor's request provided the contractor is making satisfactory progress on the contract and there is no specific cause or claim requiring a greater amount to be retained. After the contract is fifty per cent completed, no more than five per cent of the amount of any subsequent progress payments made under the contract shall be retained providing the contractor is making satisfactory progress on the project, except that if at any time the state determines satisfactory progress is not being made ten per cent retention shall be reinstated for all progress payments made under the contract subsequent to the determination.

C. Any retention shall be paid or substitute security shall be returned to the contractor within sixty days after final completion and acceptance of work under the contract. Retention of payments by a purchasing agency longer than sixty days after final completion and acceptance requires a specific written finding by the purchasing agency of the reasons justifying the delay in payment. No purchasing agency may retain any monies after sixty days which are in excess of the amount necessary to pay the expenses the purchasing agency reasonably expects to incur in order to pay or discharge the expenses determined by the finding justifying the retention of monies.

D. This state shall not accept any substitute security unless accompanied by a signed and acknowledged waiver of any right or power of the obligor to set off any claim against either the state governmental unit or the contractor in relationship to the security assigned. In any instance in which this state accepts substitute security as provided in this section, any subcontractor undertaking to perform any part of the contract is entitled to provide such security to the contractor.

E. Notwithstanding anything to the contrary in this section or in any other law:

1. There shall be no retention for job-order-contracting construction services contracts and the purchasing agency may elect to have no retention for construction-manager-at-risk and design-build construction services contracts.
2. This section applies only to amounts payable in a construction services contract for construction and does not apply to amounts payable in a construction services contract for design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

R2-7-509. Conditions for Use of Substitute Security in Lieu of Retention

A contractor may submit substitute security to replace contract payment retention if:

1. The contractor requests the use of substitute security before the first progress payment;
2. The contractor submits an invoice with each progress payment in an amount of no less than 10% of the progress payment, or the contractor submits an invoice once at the beginning of the project in an amount no less than 5% of the total contract amount;
3. The interest earned on the security shall accrue to the benefit of the contractor but shall be retained by the contractor until the agency chief procurement officer has approved completion and acceptance of all work to be performed under the contract; and

4. The contractor ensures that the date of maturity of the security is after the estimated contract completion date, but no later than one year after the estimated contract completion date.

R2-7-510. The Form of Substitute Security in Lieu of Retention

If the conditions identified under R2-7-506 are met, the agency chief procurement officer shall accept a substitute security from a contractor in the form of one of the following:

1. An assignment of a time certificate of deposit by a financial institution licensed by this state;
2. Share certificates of a financial institution or credit union authorized to transact business in this state; or
3. Security issued or guaranteed as to principal and interest by:
   a. The United States;
   b. The state; or
   c. Counties, municipalities, and school districts within this state.

§ 41-2577. Progress payments

A. Progress payments may be made by this state to the contractor on the basis of a duly certified and approved estimate of the work performed during a preceding period of time as set by rule, except that a percentage of all estimates shall be retained as provided in section 41-2576. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the owner on submission to any person designated by the owner for the submission, review or approval of the estimate of the work. An estimate of the work submitted under this section shall be deemed approved and certified after seven days from the date of submission unless before that time the owner or owner's agent prepares and issues a specific written finding detailing those items in the estimate of the work that are not approved and certified under the contract. The owner may withhold an amount from the progress payment sufficient to pay the expenses the owner reasonably expects to incur in correcting the deficiency set forth in the written finding. On completion and acceptance of separate divisions of the contract on which the price is stated separately in the contract, payment may be made in full including retained percentages, less deductions, unless a substitute security has been provided pursuant to section 41-2576. No contract for construction may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section.

B. The contractor shall pay to the contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the contractor or subcontractor on account of the work performed by the contractor's or subcontractor's subcontractors, to the extent of each such subcontractor's interest therein, except that no contract for construction may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section. These payments to subcontractors or material suppliers shall be based on payments received pursuant to this section. Any diversion by the contractor or subcontractor of payments received for work performed on a contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the registrar of

contractors. The subcontractor or material supplier shall notify the registrar of contractors and the purchasing agency in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this section.

C. A subcontractor may notify the purchasing agency in writing requesting that the subcontractor be notified by the purchasing agency in writing within five days from payment of each progress payment made to the contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.

D. Nothing in this chapter prevents the contractor or subcontractor, at the time of application and certification to the owner or contractor, from withholding such application and certification to the owner or contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention that does not exceed the actual percentage retained by the owner.

E. If any payment to a contractor is delayed after the date due interest shall be paid at the rate of one per cent per month or a fraction of the month on such unpaid balance as may be due.

F. If any periodic or final payment to a subcontractor is delayed by more than seven days after receipt of periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay the contractor's or subcontractor's subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent per calendar month or a fraction of a calendar month on such unpaid balance as may be due.

G. Notwithstanding anything to the contrary in this section, this section applies only to amounts payable in a construction services contract for construction and does not apply to amounts payable in a construction services contract for design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

§ 41-2578. Procurement of specified professional and construction services; definition

A. Except as authorized by sections 41-2535, 41-2536, 41-2537 and 41-2581, a single contract for architect services, assayer services, construction-manager-at-risk construction services, design-build construction services, engineer services, job-order-contracting construction services, geologist services, landscape architect services and land surveying services shall be procured as provided in this section.

B. This state shall provide notice, in accordance with rules, of each procurement of a single contract for professional services or construction services specified in this section and shall award the single contract on the basis of demonstrated competence and qualifications for the type of professional services or construction services pursuant to procedures prescribed in this section.

C. In the procurement of a single contract for professional services or construction services pursuant to this section:

1. The following requirements apply:

(a) The purchasing agency and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this subsection or under subsection D of this section, including the selection of persons or firms to be interviewed, the selection of persons or firms to be on the final list, in determining the order of preference of persons or firms on the final list or for any other purpose in the selection process.

(b) In determining the persons or firms to participate in any interviews and in determining the persons and firms to be on the final list and their order on the final list, the selection committee shall use and shall consider only the criteria and weighting of criteria specified by the purchasing agency for that purpose as provided in this subsection. No other factors or criteria may be used in the evaluation, determinations and other actions.

(c) A purchasing agency is limited to one contract in each procurement under this section. Alternatively:

(i) For construction-manager-at-risk construction services, a purchasing agency may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.

(ii) For design-build construction services, a purchasing agency may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.

(iii) For professional services, a purchasing agency may enter into multiple contracts for different phases of a single project.

(d) All construction-manager-at-risk construction services or design-build construction services included in a procurement under this section shall be limited to construction services to be performed at a single location, a common location or, if the construction services are all for a similar purpose, multiple locations. For construction-manager-at-risk construction services and design-build construction services to be performed at multiple locations:

(i) At the time the request for qualifications is issued, the purchasing agency must intend to commence all construction at each location within thirty months after execution of the first contract for preconstruction services or other construction services at any of the locations.

(ii) The request for qualifications must include the information described in paragraph 2, subdivision (g) of this subsection.

(e) If the purchasing agency enters into the first contract for preconstruction services, construction services or professional services as the result of the procurement, the procurement under this section ends. After execution of that first contract the purchasing agency may not use the procurement or the

existing final list in the procurement as the basis for entering into a contract with any other person or firm that participated in the procurement.

(f) Notwithstanding any other provision of this section specifying the number of persons or firms to be interviewed, the number of persons or firms to be on a final list or any other numerical specification in this section:

(i) If a smaller number of persons or firms respond to the request for qualifications or if one or more persons or firms drop out of the procurement so that there is a smaller number of persons or firms participating in the procurement, the purchasing agency, as the purchasing agency determines necessary or appropriate, may elect to proceed with the procurement with the participating persons or firms if there are at least two participating responsive and responsible persons or firms. Alternatively, the purchasing agency may elect to terminate the procurement.

(ii) As to a request for qualifications for professional services or construction services to be negotiated pursuant to subsection E of this section only, if only one responsive and responsible person or firm responds to the request for qualifications or if one or more persons or firms drop out of the procurement so that only one responsive and responsible person or firm remains in the procurement, the director may elect to proceed with the procurement with only one person or firm if the director determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and that either other prospective persons or firms had reasonable opportunity to respond or there is not adequate time for a resolicitation.

(iii) If a person or firm on the final list withdraws or is removed from the procurement and the selection committee determines that it is in the best interest of the state, the selection committee may replace that person or firm on the final list with another person or firm that submitted qualifications in the procurement and that is selected by the selection committee as the next most qualified.

2. The purchasing agency shall issue a request for qualifications for each procurement and give adequate public notice of the request for qualifications in the same manner as provided in section 41-2533. The request for qualifications shall:

(a) State that one contract may or will be awarded, describe the services to be performed under the contract and state that one person or firm may or will be awarded the contract.

(b) In a procurement of a contract to be negotiated under subsection E of this section, state that there will be a single final list of at least three and not more than five persons or firms. In a procurement in which the contract will be awarded under subsection F of this section, state that there will be a single final list and that the number of persons or firms on the final list will be three.

(c) As prescribed below, state the selection criteria and relative weight of the selection criteria to be used by the selection committee, except that for construction services one of the criteria shall be the person's or firm's subcontractor selection plan or procedures to implement the purchasing agency's subcontractor selection plan. All selection criteria under this subsection shall be factors that demonstrate competence and qualifications for the type of professional services or construction services included in the procurement. If:

(i) Interviews will be held, the request for qualifications shall state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms to be interviewed and the request for qualifications may state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms on the final list and in determining their order on the final list. The final list selection criteria and relative weights may be different than the selection criteria and relative weights used to determine the persons or firms to be interviewed. The request for qualifications also shall state whether the purchasing agency will select the persons or firms on the final list and their order on the final list solely through the results of the interview process or through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the purchasing agency's request for qualifications.

(ii) Interviews will not be held, the request for qualifications shall state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms on the final list and in determining their order on the final list.

(d) If the purchasing agency will hold interviews as part of the selection process, state that interviews will be held and that the interviews will be with at least three and no more than five persons or firms.

(e) For procurements of construction services, include either:

(i) A requirement that each person or firm submit a proposed subcontractor selection plan and a requirement that the proposed subcontractor selection plan must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone.

(ii) A subcontractor selection plan adopted by the purchasing agency that applies to the person or firm that is selected to perform the construction services and that requires subcontractors to be selected based on qualifications alone or on a combination of qualifications and price and not based on price alone and a requirement that each person or firm

must submit a description of the procedures it proposes to use to implement the purchasing agency's subcontractor selection plan.

(f) Include a description of the publicly available location of the purchasing agency's protest policy and procedures or, if the purchasing agency does not have a protest policy and procedures, a statement that the protest policy and procedures referred to in subsection J of this section apply to any protests in connection with the procurement.

(g) In a procurement of construction-manager-at-risk construction services or design-build construction services to be performed at multiple locations, include:

(h) A brief description of the construction services to be performed at each location.

(i) The estimated budget for the construction services to be performed at each location.

(ii) A schedule for the construction services to be performed at each location that shows the purchasing agency's intent to commence all construction at each location within thirty months after execution of the first contract for preconstruction services or other construction services at any of the locations.

3. The director or head of a purchasing agency shall initiate an appropriately qualified selection committee for each request for qualifications in accordance with rules adopted by the director. The director or head of a purchasing agency shall ensure that the selection committee members are competent to serve on the selection committee. Each selection committee must include one employee of the purchasing agency or a purchasing agency representative appointed by the purchasing agency. If procuring professional services, the purchasing agency shall determine the number and qualifications of the selection committee members. A selection committee for the procurement of construction services shall not have more than seven members and shall include at least one person who is a senior management employee of a licensed contractor and one person who is an architect or an engineer who is registered pursuant to section 32-121. These members may be employees of the purchasing agency or outside consultants. Outside contractors, architects and engineers serving on a selection committee shall not receive compensation from the purchasing agency for performing this service, but the purchasing agency may elect to reimburse outside contractors, architects and engineers for travel, lodging and other expenses incurred in connection with service on a selection committee. A person who is a member of a selection committee shall not be a contractor under a contract awarded under the procurement or provide any professional services, construction, construction services, materials or other services under the contract. The selection committee and the purchasing agency shall do the following:

(a) If interviews are specified in the request for qualifications:

(i) The selection committee shall determine the person or firms to be interviewed by evaluating the statements of qualifications and performance data that are submitted in response to the purchasing agency's request for qualifications based only on the selection criteria and relative weight of the selection criteria stated in the request for qualifications to be used to determine the persons or firms to be interviewed.

(ii) If the selection criteria and relative weight of the selection criteria to be used by the selection committee to select the persons or firms on the final list and to determine their order on the final list are not included in the request for qualifications, before the interviews are held the purchasing agency shall distribute to the persons or firms to be interviewed the selection criteria and relative weight of the selection criteria to be used to select the persons or firms on the final list and to determine their order on the final list. These selection criteria and relative weight may be different than the selection criteria and relative weight used to determine the persons or firms to be interviewed.

(iii) The selection committee shall conduct interviews with at least three but not more than five persons or firms as specified in the request for qualifications regarding the professional services or construction services and the relative methods of approach for furnishing the required professional services or construction services.

(b) Based only on the selection criteria and relative weight of the selection criteria specified as provided in this subsection for selection of the persons or firms on the final list and their order on the final list, the selection committee shall select the persons or firms for the final list and, in the case of a final list for a contract that will be negotiated under subsection E of this section, rank the three persons or firms on the final list in order of preference.

(c) If the contract will be negotiated under subsection E of this section, before or at the same time as the purchasing agency notifies the highest ranking person or firm on the final list that it is the highest ranking person or firm, the purchasing agency shall send actual notice to each of the following that it is not the highest person or firm on the final list or that another person or firm is the highest ranking person or firm on the final list:

(i) If interviews were held, the other persons and firms interviewed.

(ii) If interviews were not held, the other persons and firms that made submittals.

(d) If the contract will be awarded under subsection F of this section, before or at the same time as the purchasing agency notifies the persons or firms on the final list that they are on the final list, the purchasing agency shall send actual notice to each of the following persons or firms that they are not on the final list or that other persons or firms are on the final list:

(i) If interviews were held, the other persons or firms interviewed.

(ii) If interviews were not held, the other persons or firms that made submittals.

D. The director shall award the single contract under the procurement as provided in subsection E or F of this section.

E. The procurement officer shall conduct negotiations with persons or firms on the final list as follows:

1. The procurement is for a single contract for construction services or professional services, and there is one final list.
2. The negotiations shall include consideration of compensation and other contract terms that the procurement officer determines to be fair and reasonable to the procurement officer. In making this decision, the procurement officer shall take into account the estimated value, the scope, the complexity and the nature of the professional services or construction services to be rendered.
3. The procurement officer shall enter into negotiations with the highest qualified person or firm on the final list.
4. If the procurement officer is not able to negotiate a satisfactory contract with the highest qualified person or firm on the final list, at compensation and on other contract terms the procurement officer determines to be fair and reasonable to this state, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer shall then undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list.
5. If, in a procurement under this section, the procurement officer terminates negotiations with a person or firm on the final list and commences negotiations with another person or firm on the final list, the procurement officer shall not in that procurement recommence negotiations or enter into a contract for the construction services or professional services covered by the final list with any person or firm on the final list with whom the procurement officer has terminated negotiations.

F. As an alternative to subsection E of this section, the procurement officer may award a single contract for design-build construction services or job-order-contracting construction services as follows:

1. The procurement officer shall use the selection committee appointed for the request for qualifications pursuant to subsection C of this section.
2. The procurement officer shall issue a request for proposals to the persons or firms on the final list developed pursuant to subsection C of this section.
3. The request for proposals shall include:

(a) The purchasing agency's project schedule and project final budget for design and construction or life cycle budget for a procurement that includes maintenance services or operations services.

(b) A statement that the contract will be awarded to the person or firm whose proposal receives the highest number of points under a scoring method.

(c) A description of the scoring method, including a list of the factors in the scoring method and the number of points allocated to each factor. The factors in the scoring method may include:

(i) For design-build construction services only, demonstrated compliance with the design requirements.

(ii) Offeror qualifications.

(iii) Offeror financial capacity.

(iv) Compliance with the purchasing agency's project schedule.

(v) For design-build construction services only, if the request for proposals specifies that the purchasing agency will spend its project budget and not more than its project budget and is seeking the best proposal for the project budget, compliance of the offeror's price or life cycle price for procurements that include maintenance services, operations services or finance services with the purchasing agency's budget as prescribed in the request for proposals.

(vi) For design-build construction services if the request for proposals does not contain the specifications prescribed in item (v) and for job-order-contracting construction services, the price or life cycle price for procurements that include maintenance services, operations services or finance services.

(vii) An offeror quality management plan.

(viii) Other evaluation factors that demonstrate competence and qualifications for the type of construction services in the request for proposals as determined by the purchasing agency, if any.

(d) For design-build construction services only, the design requirements.

(e) A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal be responsive to the requirements in the request for proposals. For design-build construction services, the price in the price proposal shall be a fixed price or a guaranteed maximum price.

(f) A statement that in applying the scoring method the selection committee will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.

(g) If the purchasing agency conducts discussions pursuant to paragraph 5 of this subsection, a statement that discussions will be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.

4. If the purchasing agency determines to conduct discussions pursuant to paragraph 5 of this subsection, each offeror shall submit a preliminary technical proposal to the purchasing agency before those discussions are held.

5. If determined by the purchasing agency and included by the purchasing agency in the request for proposals, the selection committee shall conduct discussions with all offerors that submit preliminary technical proposals. Discussions shall be for the purpose of

clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and for clarification by the owner. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.

6. After completion of any discussions pursuant to paragraph 5 of this subsection or if no discussions are held, each offeror shall submit separately its final technical proposal and its price proposal.
7. Before opening any price proposal, the selection committee shall open the final technical proposals, evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.
8. After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.
9. The procurement officer shall award the contract or contracts to the responsive and responsible offeror whose proposal receives the highest score under the method of scoring in the request for proposals. No other factors or criteria may be used in the evaluation. Before or at the same time as the purchasing agency notifies the winning offeror that it has won, the purchasing agency shall send actual notice to each other offeror either that the offeror has not won or that another offeror has won.
10. The contract or contracts file shall contain the basis on which the award is made, including at a minimum the information and documents required under subsection G of this section.
11. For design-build construction services only, the procurement officer shall award a stipulated fee equal to a percentage, as prescribed in the request for proposals, of the purchasing agency's project final budget for design and construction, as prescribed in the request for proposals, but not less than two-tenths of one per cent of the project final budget for design and construction to each final list offeror who provides a responsive, but unsuccessful, proposal. If the procurement officer does not award a contract, all responsive final list offerors shall receive the stipulated fee based on the purchasing agency's project final budget for design and construction as included in the request for proposals. The procurement officer shall pay the stipulated fee to each offeror within ninety days after the award of the initial contract or the decision not to award a contract. In consideration for paying the stipulated fee, the procurement officer may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the offerors. Notwithstanding the other provisions of this

paragraph, an offeror may elect to waive the stipulated fee. If an offeror elects to waive the stipulated fee, the purchasing agency may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the purchasing agency from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipulated fee.

G. At a minimum, the purchasing agency shall retain the following for each procurement under this section:

1. For each request for qualifications procurement process under subsection C of this section:

(a) If interviews were not held:

(i) The submittal of the person or firm listed first on the final list and, if different, the submittal of the person or firm with which the purchasing agency enters into a contract.

(ii) The final list.

(iii) A list of the selection criteria and relative weight of selection criteria used to select the persons or firms for the final list and to determine their order on the final list.

(iv) A list that contains the name of each person or firm that submitted qualifications and that shows the person's or firm's final overall rank or score.

(v) A document or documents that show the final score or rank on each selection criteria of each person or firm that submitted qualifications and that support the final overall rankings and scores of the persons or firms that submitted qualifications. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

(b) If interviews were held:

(i) All submittals of the person or firm listed first on the final list and, if different, all submittals of the person or firm with which the purchasing agency enters into a contract.

(ii) The final list.

(iii) A list of the selection criteria and relative weight of selection criteria used to select the persons or firms for the final list and to determine their order on the final list.

(iv) A list that contains the name of each person or firm that was interviewed and that shows the person's or firm's final overall rank or score.

(v) A document or documents that show the final score or rank on each selection criteria of each person or firm that was interviewed and that support the final overall rankings and scores of the persons or firms that were interviewed. At the election of the purchasing agency, this

documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

(vi) A list of the selection criteria and relative weight of the selection criteria used to select the persons or firms for the short list to be interviewed.

(vii) A list that contains the name of each person or firm that submitted qualifications and that shows the person's or firm's final overall rank or score in the selection of the persons or firms to be on the short list to be interviewed.

(viii) A document or documents that show the final score or rank on each selection criteria of each person or firm that submitted qualifications and that support the final overall rankings and scores of the persons or firms that submitted qualifications in the selection of the persons or firms to be on the short list to be interviewed. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for the individual selection committee members or any other form as determined by the purchasing agency.

2. For each request for proposals procurement process under subsection F of this section:

(a) The entire proposal submitted by the person or firm that received the highest score in the scoring method in the request for proposals and, if different, the entire proposal submitted by the person or firm with which the purchasing agency enters into a contract.

(b) The description of the scoring method, the list of factors in the scoring method and the number of points allocated to each factor, all as included in the request for proposals.

(c) A list that contains the name of each offeror that submitted a proposal and that shows the offeror's final overall score.

(d) A document or documents that show the final score on each factor in the scoring method in the request for proposals of each offeror that submitted a proposal and that support the final overall scores of the offerors that submitted proposals. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

H. Information relating to each procurement under this section shall be made available to the public as follows:

1. Notwithstanding title 39, chapter 1, article 2, until the purchasing agency awards a contract or terminates the procurement, only the name of each person or firm on the final list developed pursuant to subsection C of this section may be made available to the public. All other information received by the purchasing agency in response to the

request for qualifications pursuant to subsection C of this section or contained in proposals submitted pursuant to subsection F of this section shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing submitters and offerors during the selection process.

2. After the purchasing agency awards the contract or terminates the procurement, the purchasing agency shall make available to the public pursuant to title 39, chapter 1, article 2 at a minimum all of the items that the purchasing agency is required to retain under subsection G of this section, except the proposals submitted in response to a request for proposals under subsection F of this section and the document or documents prescribed in subsection G, paragraph 1, subdivision (a), item (v) and subdivision (b), items (v) and (viii) and paragraph 2, subdivision (d) of this section.
3. The proposals submitted under subsection F of this section shall not be made available to the public until after the purchasing agency has entered into a contract or terminated the procurement. At a minimum the proposals submitted under subsection F of this section that the purchasing agency is required to retain under subsection G of this section shall be made available to the public after the purchasing agency has entered into a contract or terminated the procurement.
4. To the extent that the offeror designates and the purchasing agency concurs, trade secrets and other proprietary data contained in a proposal remain confidential.
5. The document or documents prescribed in subsection G, paragraph 1, subdivision (a), item (v) and subdivision (b), items (v) and (viii) and paragraph 2, subdivision (d) of this section are available to the extent provided in title 39, chapter 1, article 2.

I. A purchasing agency may cancel a request for qualifications or a request for proposals, reject in whole or in part any or all submissions of qualifications or proposals or determine not to enter into a contract as specified in the solicitation if it is in the best interest of the purchasing agency. The purchasing agency shall make the reasons for cancellation, rejection or determination not to enter into a contract part of the contract file.

J. If the purchasing agency does not have a procurement protest policy and procedures that have been formally adopted and published by the purchasing agency, for protests relating to procurements under this section the purchasing agency shall follow the procurement protest policy and procedures of the department. The purchasing agency shall process all protests relating to procurements under this section.

K. For the purposes of this section, "professional services" includes architect services, engineer services, landscape architect services, assayer services, geologist services and land surveying services and any combination of those services.

§ 41-2579. Procurement of multiple contacts for certain job-order-contracting construction services and certain professional services; definition

A. Except as authorized in this section and in sections 41-2535, 41-2536, 41-2537 and 41-2581, a purchasing agency shall not procure in a single procurement multiple contracts for construction services or professional services. In a procurement under this section, there is a single

procurement process for all of the multiple contracts included in the procurement. A purchasing agency may procure under this section:

1. Multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms.
2. Multiple contracts for professional services to be awarded to separate persons or firms or to be awarded to a single person or firm as specified in the request for qualifications.

B. A purchasing agency shall provide notice of each procurement under this section and shall award contracts on the basis of demonstrated competence and qualifications for the type of professional services or construction services pursuant to the procedures prescribed in this section.

C. In a procurement pursuant to this section:

1. The following requirements apply:

(a) The purchasing agency and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this subsection or under subsection D of this section, including the selection of persons or firms to be interviewed, the selection of persons or firms to be on a final list, in determining the order of preference of persons or firms on a final list or for any other purpose in the selection process.

(b) In determining the persons or firms to participate in any interviews and in determining the persons and firms to be on a final list and their order on a final list, the selection committee shall use and shall consider only the criteria and weighting of criteria specified by the purchasing agency for that purpose as provided in this subsection. No other factors or criteria may be used in the evaluation, determinations and other actions.

(c) If the purchasing agency enters into the number of multiple contracts being procured for job-order-contracting construction services or professional services, a procurement under this section ends. After that time the purchasing agency may not use the procurement or any existing final list in the procurement as the basis for entering into a replacement contract with any other person or firm that participated in the procurement.

(d) Notwithstanding any other provision of this section specifying the number of persons or firms to be interviewed, the number of persons or firms to be on a final list or any other numerical specification in this section:

(i) If a smaller number of persons or firms respond to the request for qualifications or if one or more persons or firms drop out of the procurement so that there is a smaller number of persons or firms participating in the procurement, the purchasing agency, as the purchasing agency determines necessary or appropriate, may elect to proceed with the procurement with the participating persons or firms if there are at least two participating responsive and responsible persons or firms. Alternatively, the purchasing agency may elect to terminate the procurement.

(ii) As to a request for qualifications for professional services or job-order-contracting construction services to be negotiated pursuant to subsection E of this section only, if only one responsive and responsible person or firm responds to the request for qualifications or if one or more persons or firms drop out of the procurement so that only one responsive and responsible person or firm remains in the procurement, the director may elect to proceed with the procurement with only one person or firm if the director determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and that either other prospective persons or firms had reasonable opportunity to respond or there is not adequate time for a resolicitation.

(iii) If a person or firm on a final list withdraws or is removed from the procurement and the selection committee determines that it is in the best interest of this state, the selection committee may replace that person or firm on the final list with another person or firm that submitted qualifications in the procurement and that is selected by the selection committee as the next most qualified.

2. The purchasing agency shall issue a request for qualifications for each procurement and give adequate public notice of the request for qualifications in the same manner as provided in section 41-2533. The publication shall include the fact that multiple contracts may or will be awarded, shall state the number of contracts that may or will be awarded and shall describe the professional services or job-order-contracting construction services to be performed under each contract. The request for qualifications shall:

(a) State the following information about the contracts that may or will be awarded:

(i) If the request for qualifications is for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms, that multiple contracts for similar job-order-contracting construction services may or will be awarded, the number of contracts that may or will be awarded, the services to be performed under each of the multiple contracts and that each of the multiple contracts will be awarded to a separate person or firm.

(ii) If the request for qualifications is for multiple contracts for professional services, that multiple contracts for professional services may or will be awarded, the number of contracts that may or will be awarded, the services to be performed under each of the multiple contracts and either that each of the multiple contracts will be awarded to a separate person or firm or that all of the multiple contracts will be awarded to the same person or firm.

(b) State as to final lists:

(i) In a procurement of multiple contracts for professional services to be awarded to a single person or firm, that there will be a single final list of at least three and not more than five persons or firms.

(ii) In a procurement for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms or in a procurement for multiple contracts for similar professional services to be awarded to separate persons or firms, that there will be a single final list and the number of persons or firms on the final list, which shall be the sum of the number of contracts that may or will be awarded and a number that is determined by the purchasing agency and that is not more than five.

(iii) In a procurement for multiple contracts for different professional services to be awarded to separate persons or firms, that there will be a separate final list for each type of professional services and that the number of persons or firms on each final list will be the number of contracts that may or will be awarded for each type of professional services and a number that is determined by the purchasing agency and that is not more than five.

(c) As prescribed below, state the selection criteria and relative weight of the selection criteria to be used by the selection committee, except that in a procurement for multiple contracts for job-order-contracting construction services to be awarded to separate persons or firms one of the criteria shall be the person's or firm's subcontractor selection plan or procedures to implement the purchasing agency's subcontractor selection plan. All selection criteria under this subsection shall be factors that demonstrate competence and

qualifications for the type of professional services or job-order-contracting construction services included in the procurement. If:

(i) Interviews will be held, the request for qualifications shall state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms to be interviewed and the request for qualifications may state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms on each final list and in determining their order on each final list. The final list selection criteria and relative weights may be different than the selection criteria and relative weights used to determine the persons or firms to be interviewed. The request for qualifications also shall state whether the purchasing agency will select the persons or firms on the final list and their order on the final list solely through the results of the interview process or through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the purchasing agency's request for qualifications.

(ii) Interviews will not be held, the request for qualifications shall state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms on each final list and in determining their order on each final list.

(d) If the purchasing agency will hold interviews as part of the selection process:

(i) In a procurement of multiple contracts for professional services to be awarded to the same person or firm, state that interviews will be held and that the interviews will be with at least three but not more than five persons or firms.

(ii) In a procurement of multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms or in a procurement of multiple contracts for similar professional services to be awarded to separate persons or firms, state that interviews will be held and that the interviews will be with a specified number of persons or firms. The specified number shall be stated in the request for qualifications, shall be determined by the purchasing agency and shall be the sum of the number of contracts that may or will be awarded and a number that is determined by the purchasing agency and that is not more than five.

(iii) In a procurement of multiple contracts for different professional services to be awarded to separate persons or firms, state that interviews will be held and that the interviews will be with a specified number of persons or firms. The specified number shall be stated in the request for qualifications, shall be determined by the purchasing agency, shall be at least three times the number of contracts that may or will be awarded

and shall not be more than five times the number of contracts that may or will be awarded.

(e) For procurements of multiple contracts for job-order-contracting construction services to be awarded to separate persons or firms, include either:

(i) A requirement that each person or firm submit a proposed subcontractor selection plan and a requirement that the proposed subcontractor selection plan must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone.

(ii) A subcontractor selection plan adopted by the purchasing agency that applies to the person or firm that is selected to perform the job-order-contracting construction services and that requires subcontractors to be selected based on qualifications alone or on a combination of qualifications and price and not based on price alone and a requirement that each person or firm must submit a description of the procedures it proposes to use to implement the purchasing agency's subcontractor selection plan.

(f) Include a description of the publicly available location of the purchasing agency's protest policy and procedures or, if the purchasing agency does not have a protest policy and procedures, a statement that the protest policy and procedures referred to in subsection J of this section apply to any protests in connection with the procurement.

3. The director or head of the purchasing agency shall initiate an appropriately qualified selection committee for each request for qualifications. The director or head of the purchasing agency shall ensure that the selection committee members are competent to serve on the selection committee. Each selection committee must include one employee of the purchasing agency or a purchasing agency representative appointed by the purchasing agency. The same selection committee shall function as to all of the multiple contracts included in the procurement. If the purchasing agency is procuring multiple contracts for professional services, the purchasing agency shall determine the number and qualifications of the selection committee members. A selection committee for the procurement of multiple contracts for job-order-contracting construction services shall have not more than seven members and shall include at least one person who is a senior management employee of a licensed contractor and one person who is an architect or engineer registered pursuant to section 32-121. These members may be employees of the purchasing agency or outside consultants. Outside contractors, architects and engineers serving on a selection committee are not entitled to receive compensation from the purchasing agency for performing this service, but the purchasing agency may elect to reimburse outside contractors, architects and engineers for travel, lodging and other expenses incurred in connection with service on a selection committee. A person who is a member of a selection committee shall not be a contractor under a contract awarded under the procurement or provide any professional services, construction, construction

services, materials or other services under the contract. The selection committee and the purchasing agency shall do the following:

(a) If interviews are specified in the request for qualifications:

(i) The selection committee shall determine the persons or firms to be interviewed by evaluating the statements of qualifications and performance data that are submitted in response to the purchasing agency's request for qualifications based only on the selection criteria and relative weight of the selection criteria stated in the request for qualifications to be used to determine the persons or firms to be interviewed.

(ii) If the selection criteria and relative weight of the selection criteria to be used by the selection committee to select the persons or firms on a final list and to determine their order on a final list are not included in the request for qualifications, before the interviews are held the purchasing agency shall distribute to the persons or firms to be interviewed the selection criteria and relative weight of the selection criteria to be used to select the persons or firms on each final list and to determine their order on each final list. These selection criteria and relative weight may be different than the selection criteria and relative weight used to determine the persons or firms to be interviewed.

(iii) The selection committee shall conduct interviews with the number of persons or firms to be interviewed as stated in the request for qualifications regarding the professional services or job-order-contracting construction services and the relative methods of approach for furnishing the required professional services or job-order-contracting construction services.

(b) Based only on the selection criteria and relative weight of the selection criteria specified as provided in this subsection for selection of the persons or firms on each final list and their order on each final list, the selection committee shall select the persons or firms for each final list and in the case of a final list or final lists for multiple contracts that will be negotiated under subsection E of this section, rank the persons or firms on each final list in order of preference. If the procurement is for multiple contracts for different professional services to be awarded to separate persons or firms, there is a separate final list for each type of professional services, and if a person or firm submitted qualifications for more than one type of professional services, the person or firm may be on more than one final list.

(c) If the contract will be awarded under subsection E of this section, before or at the same time as the purchasing agency notifies the persons or firms on each final list that they are on that final list, the purchasing agency shall send actual notice to the following persons or firms that they are not on that final list:

(i) If interviews were held, the other persons and firms interviewed for that final list.

(ii) If interviews were not held, the other persons and firms that made submittals for that final list.

(d) If the contract will be awarded under subsection F of this section, before or at the same time as the purchasing agency notifies the persons or firms on the final list that they are on the final list, the purchasing agency shall send actual notice to each of the following persons or firms that they are not on the final list or that other persons or firms are on the final list:

(i) If interviews were held, the other persons or firms interviewed.

(ii) If interviews were not held, the other persons or firms that made submittals.

D. The purchasing agency shall award multiple contracts specified in the request for qualifications as provided in subsection E or F of this section.

E. The procurement officer shall conduct negotiations with persons or firms on the final list or final lists. The negotiations shall include consideration of compensation and other contract terms that the procurement officer determines to be fair and reasonable to this state. In making this decision, the procurement officer shall take into account the estimated value, the scope, the complexity and the nature of the professional services or job-order-contracting construction services to be rendered. If in a procurement under this section the procurement officer terminates negotiations with a person or firm on a final list and commences negotiations with another person or firm on that final list, the procurement officer shall not in that procurement recommence negotiations or enter into a contract for the job-order-contracting construction services or professional services covered by that final list with any person or firm on that final list with whom the procurement officer has terminated negotiations. If the procurement is for:

1. Multiple contracts for professional services to be awarded to a single person or firm, there is one final list and the procurement officer shall enter into negotiations with the highest qualified person or firm on the final list. If the procurement officer is not able to negotiate a satisfactory contract with the highest qualified person or firm on the final list, at compensation and on other contract terms the procurement officer determines to be fair and reasonable, the procurement officer shall then undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list.
2. Multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms or for multiple contracts for similar professional services to be awarded to separate persons or firms, there is one final list and the procurement officer shall enter into separate negotiations for contracts with the number of the highest qualified persons or firms on the final list equal to the number of contracts to be awarded.

If the procurement officer is not able to negotiate a satisfactory contract with a person or firm with whom the procurement officer has commenced negotiations, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer shall then undertake negotiations for a contract with the next most qualified person or firm on the final list with whom the procurement officer is not then negotiating and with whom the procurement officer has not previously negotiated in sequence until an agreement is reached for some or all of the multiple contracts included in the request for qualifications or a determination is made to reject all persons or firms on the final list.

3. Multiple contracts for different professional services to be awarded to separate persons or firms, there is a separate final list for each type of professional services and the procurement officer shall enter into separate negotiations for contracts with the number of the highest qualified persons or firms on the final list equal to the number of contracts to be awarded. If the procurement officer is not able to negotiate a satisfactory contract with a person or firm with whom the procurement officer has commenced negotiations, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer shall then undertake negotiations for a contract with the next most qualified person or firm on the final list with whom the procurement officer is not then negotiating and with whom the procurement officer has not previously negotiated in sequence until an agreement is reached for some or all of the multiple contracts included in the request for qualifications or a determination is made to reject all persons or firms on the final list.

F. As an alternative to subsection E of this section, the purchasing agency may award multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms as follows:

1. The purchasing agency shall use the selection committee appointed for the request for qualifications pursuant to subsection C of this section.
2. The purchasing agency shall issue a request for proposals to the persons or firms on the final list developed pursuant to subsection C of this section.
3. The request for proposals shall include:
   (a) The purchasing agency's project schedule and project final budget for design and construction or life cycle budget for a procurement that includes maintenance services or operations services.
   (b) A statement that the multiple contracts will be awarded to a specified number of offerors whose proposals receive the highest number of points under a scoring method. The specified number of offerors will be the number of contracts included in the procurement.
   (c) A description of the scoring method, including a list of the factors in the scoring method and the number of points allocated to each factor. The factors in the scoring method may include:
      (i) Offeror qualifications.
      (ii) Offeror financial capacity.
      (iii) Compliance with the purchasing agency's project schedule.

(iv) The price or life cycle price for procurements that include maintenance services, operations services or finance services.

(v) An offeror quality management plan.

(vi) Other evaluation factors that demonstrate competence and qualifications for the job-order-contracting construction services in the request for proposals as determined by the purchasing agency, if any.

(d) A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal be responsive to the requirements in the request for proposals.

(e) A statement that in applying the scoring method the selection committee will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.

(f) If the purchasing agency conducts discussions pursuant to paragraph 5 of this subsection, a statement that discussions will be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.

4. If the purchasing agency determines to conduct discussions pursuant to paragraph 5 of this subsection, each offeror shall submit a preliminary technical proposal to the purchasing agency before those discussions are held.
5. If determined by the purchasing agency and included by the purchasing agency in the request for proposals, the selection committee shall conduct discussions with all offerors that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and for clarification by the purchasing agency. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.
6. After completion of any discussions pursuant to paragraph 5 of this subsection or if no discussions are held, each offeror shall separately submit the offeror's final technical proposal and its price proposal.
7. Before opening any price proposal, the selection committee shall open the final technical proposals, evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.
8. After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.
9. The purchasing agency shall award the multiple contracts to the responsive and responsible offerors whose proposals receive the highest scores under the method of

scoring in the request for proposals. No other factors or criteria may be used in the evaluation. Before or at the same time as the purchasing agency notifies the winning offerors that they have won, the purchasing agency shall give actual notice to each other offeror either that the offeror has not won or that other offerors have won.

10. The contracts file shall contain the basis on which the award is made, including at a minimum the information and documents required under subsection G of this section.

G. If the procurement has multiple final lists under subsection C of this section or multiple requests for proposals under subsection F of this section, the purchasing agency shall retain the items in paragraphs 1 and 2 of this subsection, as applicable, for each final list and each request for proposals procurement process. At a minimum, the purchasing agency shall retain the following for each procurement under this section:

1. As to each final list under each request for qualifications procurement process under subsection C of this section:

(a) If interviews were not held:

(i) The submittal of the person or firm listed first on the final list and all submittals of each person or firm with which the purchasing agency enters into a contract.

(ii) The final list.

(iii) A list of the selection criteria and relative weight of selection criteria used to select the persons or firms for the final list and to determine their order on the final list.

(iv) A list that contains the name of each person or firm that submitted qualifications and that shows the person's or firm's final overall rank or score.

(v) A document or documents that show the final score or rank on each selection criteria of each person or firm that submitted qualifications and that support the final overall rankings and scores of the persons or firms that submitted qualifications. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

(b) If interviews were held:

(i) All submittals of the person or firm listed first on the final list and all submittals of each person or firm with which the purchasing agency enters into a contract.

(ii) The final list.

(iii) A list of the selection criteria and relative weight of selection criteria used to select the persons or firms for the final list and to determine their order on the final list.

(iv) A list that contains the name of each person or firm that was interviewed and that shows the person's or firm's final overall rank or score.

(v) A document or documents that show the final score or rank on each selection criteria of each person or firm that was interviewed and that support the final overall rankings and scores of the persons or firms that were interviewed. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

(vi) A list of the selection criteria and relative weight of the selection criteria used to select the persons or firms for the short list to be interviewed.

(vii) A list that contains the name of each person or firm that submitted qualifications and that shows the person's or firm's final overall rank or score in the selection of the persons or firms to be on the short list to be interviewed.

(viii) A document or documents that show the final score or rank on each selection criteria of each person or firm that submitted qualifications and that support the final overall rankings and scores of the persons or firms that submitted qualifications in the selection of the persons or firms to be on the short list to be interviewed. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for the individual selection committee members or any other form as determined by the purchasing agency.

2. For each request for proposals procurement process under subsection F of this section:

(a) The entire proposal submitted by the person or firm that received the highest score in the scoring method in the request for proposals and the entire proposal submitted by each person or firm with which the purchasing agency enters into a contract.

(b) The description of the scoring method, the list of factors in the scoring method and the number of points allocated to each factor, all as included in the request for proposals.

(c) A list that contains the name of each offeror that submitted a proposal and that shows the offeror's final overall score.

(d) A document or documents that show the final score on each factor in the scoring method in the request for proposals of each offeror that submitted a proposal and that support the final overall scores of the offerors that submitted proposals. At the election of the purchasing agency, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for individual selection committee members or any other form as determined by the purchasing agency.

H. Information relating to each procurement under this section shall be made available to the public as follows:

1. Notwithstanding title 39, chapter 1, article 2, until contract award by a purchasing agency of all of the multiple contracts in the procurement or termination of the procurement by

the purchasing agency, only the name of each person or firm on the final list developed pursuant to subsection C of this section may be made available to the public and all other information received by the purchasing agency in response to the request for qualifications under subsection C of this section or contained in proposals submitted under subsection F of this section shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing submitters and offerors during the selection process.

2. After the purchasing agency awards all of the multiple contracts in the procurement or terminates the procurement, the purchasing agency shall make available to the public pursuant to title 39, chapter 1, article 2 at a minimum all of the items that the purchasing agency is required to retain under subsection G of this section, except the proposals submitted in response to a request for proposals under subsection F of this section and the document or documents prescribed in subsection G, paragraph 1, subdivision (a), item (v), and subdivision (b), items (v) and (viii) and paragraph 2, subdivision (d) of this section.
3. The proposals submitted under subsection F of this section shall not be made available to the public until after the purchasing agency has entered into a contract for all of the multiple contracts in the procurement or the purchasing agency has terminated the procurement. At a minimum the proposals submitted under subsection F of this section that the purchasing agency is required to retain under subsection G of this section shall be made available to the public after the purchasing agency has entered into a contract for all of the contracts in the procurement or the purchasing agency has terminated the procurement.
4. To the extent that the offeror designates and the purchasing agency concurs, trade secrets and other proprietary data contained in a proposal remain confidential.
5. The document or documents prescribed in subsection G, paragraph 1, subdivision (a), item (v) and subdivision (b), items (v) and (viii) and paragraph 2, subdivision (d) of this section are available to the extent provided in title 39, chapter 1, article 2.

I. The purchasing agency may cancel a request for qualifications or a request for proposals, reject in whole or in part any or all submittals or proposals or determine not to enter into one or more of the multiple contracts as specified in the solicitation if the purchasing agency determines in its absolute and sole discretion that the action is in the best interest of this state. The purchasing agency shall make the reasons for cancellation, rejection or determination not to enter into contracts part of the contract file.

J. If the purchasing agency does not have a procurement protest policy and procedures that have been formally adopted and published by the purchasing agency, for protests relating to procurements under this section the purchasing agency shall follow the procurement protest policy and procedures of the department. The purchasing agency shall process all protests relating to procurements under this section.

K. For the purposes of this section, "professional services" includes architect services, engineer services, landscape architect services, assayer services, geologist services and land surveying services and any combination of those services.

§ 41-2580. Requirements applicable to construction services and professional services and to contracts for construction services and professional services; definition

A. The requirements prescribed in this section apply to each contract entered into as the result of a procurement of construction services or professional services under section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581 and to the professional services and construction services included in each procurement under section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581.

B. If a procurement under section 41-2578 is for construction-manager-at-risk construction services or design-build construction services to be contracted pursuant to section 41-2578, subsection E or if a procurement under section 41-2535, 41-2536 or 41-2537 is for construction-manager-at-risk construction services or design-build construction services, the purchasing agency shall enter into a written contract with the contractor for preconstruction services under which the purchasing agency shall pay the contractor a fee for preconstruction services in an amount agreed by the purchasing agency and the contractor, and the purchasing agency shall not request or obtain a fixed price or a guaranteed maximum price for the construction from the contractor or enter into a construction contract with the contractor until after the purchasing agency has entered into the written contract for preconstruction services and a preconstruction services fee.

C. If a contract for construction services is entered into as the result of a procurement under section 41-2535, 41-2536, 41-2537, 41-2578 or 41-2579, construction shall not commence until the purchasing agency and contractor agree in writing on either a fixed price that the purchasing agency will pay for the construction to be commenced or a guaranteed maximum price for the construction to be commenced. The construction to be commenced may be the entire project or may be one or more phased parts of the project.

D. A contract for professional services entered into as the result of a procurement under section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581 shall have a term not exceeding five years after the date of contract award by the purchasing agency of the first contract under the procurement, except that the contract may continue in effect after the five year term for professional services on projects on which the rendering of professional services commences within the five year term.

E. Notwithstanding any other law:

1. The contractor for design-build or job-order-contracting construction services is not required to be registered to perform design services pursuant to title 32, chapter 1 if the person or firm actually performing the design services on behalf of the contractor is appropriately registered.
2. The contractor for construction-manager-at-risk, design-build or job-order-contracting construction services shall be licensed to perform construction pursuant to title 32, chapter 10.

F. For job-order-contracting construction services only:

1. The maximum dollar amount of an individual job order shall be one million dollars or such higher or lower amount prescribed by the purchasing agency in an action noticed pursuant to title 38, chapter 3, article 3.1 or a rule adopted by the purchasing agency as the maximum amount of an individual job order. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.
2. If the contractor subcontracts or intends to subcontract part or all of the work under a job order and if the job-order-contracting construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order:
   (a) The contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under one or more job orders:
      (i) A copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid.
      (ii) A copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.
   (b) If not previously delivered to the subcontractor, the contractor has a duty to deliver promptly the following to each subcontractor invited to or that has agreed to do any of the work included in any job order:
      (i) A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.
      (ii) The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.
      (iii) The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

G. Notwithstanding any contrary provision of this section or this title, a purchasing agency shall not:

1. Enter into a contract as contractor to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.
2. Contract with itself, with another purchasing agency, with this state or with any other governmental unit of this state or the federal government for the purchasing agency to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

H. The prohibitions prescribed in subsection G of this section do not prohibit a purchasing agency from providing construction for itself as provided by law.

I. The purchasing agency shall include in each contract for construction services the full street or physical address of each separate location at which the construction will be performed and a requirement that the contractor and each subcontractor at any level include in each of its subcontracts the same address information. The contractor and each subcontractor at any level shall include in each subcontract the full street or physical address of each separate location at which construction work will be performed.

J. The following provisions apply to all construction services procured under section 41-2535, 41-2536, 41-2537, 41-2578 or 41-2579:

1. The contractor performing the construction services is permitted to self-perform part of the construction work, if and to the extent agreed in writing by the purchasing agency and the contractor. The purchasing agency may use methods other than competitive bidding to assure itself that the price the purchasing agency pays to the contractor for self-performed work is fair and reasonable. Permitted methods to evaluate fairness and reasonableness of the price of self-performed work include evaluation of the contractor's proposed scope of work and price for self-performed work by an estimator who is hired and paid by the purchasing agency, who is independent of the contractor and who may be an employee of the purchasing agency. Although the purchasing agency may elect to so require, nothing in this title or any other law shall be construed or interpreted to require the purchasing agency to require a contractor desiring to self-perform part of the construction work to competitively bid that part of the construction work against other contractors in a bid competition.
2. The following requirements apply to the construction work to be performed by subcontractors and do not apply to construction work that the purchasing agency and the contractor agree in writing will be self-performed by the contractor:
   (a) The person or firm selected to perform the construction services shall select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone. A qualifications and price selection may be a single-step selection based on a combination of qualifications and price or a two-step selection. In a two-step selection, the first step shall be based on qualifications alone and the second step may be based on a combination of qualifications and price or on price alone.
   (b) The purchasing agency shall include in each contract:
      (i) If the purchasing agency included its subcontractor selection plan in the request for qualifications, the purchasing agency's subcontractor selection plan and the procedures to implement the purchasing agency's subcontractor selection plan proposed by the selected person or firm in submitting its qualifications with those modifications to the procedures as the purchasing agency and the selected person or firm agree.
      (ii) If the purchasing agency did not include its subcontractor selection plan in the request for qualifications, the subcontractor selection plan proposed by the selected person or firm in submitting its qualifications with those modifications as the purchasing agency and the selected person or firm agree.
   (c) In making the selection of subcontractors, the person or firm selected to perform the construction services shall use the subcontractor selection plan and any procedures included in its contract.

K. For the purposes of this section, "professional services" includes architect services, engineer services, landscape architect services, assayer services, geologist services and land surveying services and any combination of those services.

§ 41-2581. Procurement of certain professional services

A. A purchasing agency may procure under this section a single contract or multiple contracts for professional services if the contract is for professional services by an architect or architect firm and the contract amount is two hundred fifty thousand dollars or less or if the contract is for professional services by a person or firm other than an architect and the contract amount is five hundred thousand dollars or less. For such procurements, the director shall encourage persons or firms engaged in the lawful practice of the profession to submit annually a statement of qualifications and experience.

B. The director or head of the purchasing agency shall initiate an appropriately qualified selection committee for each procurement, which may include one contract or multiple contracts, pursuant to rules adopted by the director or purchasing agency. The amount of each contract in a single procurement under this section shall not exceed the dollar amount limits in subsection A. The selection committee shall evaluate current statements of qualifications and experience on file with the director or purchasing agency, together with those that may be submitted by other persons or firms regarding the procurement. If possible and practicable, the selection committee shall conduct interviews regarding the procurement and the relative methods of furnishing the required services and, if possible, shall select, in order of preference and based on criteria established and published by the selection committee, one or more final lists of the persons or firms deemed to be the most qualified to provide the services required. The selection committee shall base the selection of each final list and the order of preference on demonstrated competence and qualifications only. The purchasing agency and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this section, including the selection of the persons or firms to be interviewed, the selection of the persons and firms to be on a final list, in determining the order of preference of persons and firms on a final list or for any other purpose in the selection process. If the procurement is for:

1. A single contract or if the procurement is for multiple contracts to be awarded to a single person or firm, there shall be one final list of three persons or firms.
2. Multiple contracts for different professional services to be awarded to separate persons or firms, there shall be a separate final list of three persons or firms for each contract.
3. Multiple contracts for the same professional services to be awarded to separate persons or firms, there shall be one final list and the number of persons or firms on the final list shall be the number of contracts plus another number that is determined by the purchasing agency and that is not more than five.

C. After each final list is selected pursuant to subsection B, the procurement officer shall enter into negotiations with the highest qualified person or firm on each final list or, in the case of a single final list for multiple contracts for the same professional services to be awarded to separate persons or firms, the purchasing agency shall enter into negotiations with a number of the highest qualified persons or firms on the final list equal to the number of contracts that may or will be awarded. The negotiations shall include consideration of compensation and other contract terms that the procurement officer determines to be fair and reasonable to this state. In making this determination, the procurement officer shall take into account the estimated value, the scope, the complexity and the nature of the professional services to be rendered. If the procurement officer

is unable to negotiate a satisfactory contract with a person or firm with which the purchasing agency is negotiating at a price and on other contract terms the procurement officer determines to be fair and reasonable to this state, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer may undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list. If the procurement officer terminates negotiations with a person or firm on a final list and commences negotiations with another person or firm on the final list, the procurement officer shall not in that procurement recommence negotiations or enter into the single contract or multiple contracts for the professional services covered by that final list with any person or firm on that final list with whom the procurement officer has terminated negotiations.

D. If the purchasing agency does not have a procurement protest policy and procedures that have been formally adopted and published by the purchasing agency, for protests relating to procurements under this section the purchasing agency shall follow the procurement protest policy and procedures of the department. The purchasing agency shall process all protests relating to procurements under this section.

R2-7-501. Procurement of Specified Professional and Construction Services

A. The agency chief procurement officer shall procure specified professional services as defined in A.R.S. § 41-2578 41-2579 and 41-2581 in the following manner:
   1. Through existing state contracts if available;
   2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41- 2533 procurements not to exceed the amount prescribed in A.R.S. § 41-2535;
   3. May procure services in accordance with A.R.S. §§ 41-2536, 41-2537, or 41-2581.

B. Unless an alternate project delivery method is used as permitted under R2-7-503, the agency chief procurement officer shall procure construction in the following manner:
   1. Through existing state contracts if available;
   2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 for single award procurements not to exceed the amount prescribed in A.R.S. § 41-2535 or 41-2579 for multiple award procurements;
   3. In accordance with A.R.S. § 41-2533 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or
   4. May procure construction in accordance with A.R.S. § 41-2536 or 41-2537 or 2581.

C. The agency chief procurement officer shall procure construction through an alternate project delivery method in the following manner:
   1. Through existing state contracts if available;
   2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
   3. May procure construction in accordance with A.R.S. § 41-2536, 41-2537, or 41-2581.

R2-7-502. Compliance with the Department

A purchasing agency shall comply with the procurement and contract administration requirements of the Department as required by A.R.S. § 41-790 et seq.

§ 41-2582. Project delivery methods for design and construction services

A. A purchasing agency may procure design services, construction and construction services, as applicable, under any of the following project delivery methods:
   1. Design-bid-build.
   2. Construction-manager-at-risk.
   3. Design-build.
   4. Job-order-contracting.

B. For the design-bid-build project delivery method, the director shall procure:
   1. Design services pursuant to section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581.
   2. Construction by competitive sealed bidding, except as otherwise provided in section 41-2532.

C. The director shall procure construction services under the construction-manager-at-risk, design-build and job-order-contracting project delivery methods pursuant to section 41-2535, 41-2536, 41-2537, 41-2578 or 41-2579.

D. The director shall procure design services relating to a construction-manager-at-risk construction services project pursuant to section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581.

E. For job-order-contracting construction services projects, if the director does not include design services in the job-order-contracting construction services contract, the director shall procure any design services relating to job-order-contracting construction services projects under the contract pursuant to section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581.

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

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

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

R2-7-504. Notice

A. The agency chief procurement officer shall provide a copy of a solicitation for specified professional services or construction services to any person who requests a copy of the solicitation.
B. For procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall provide notice of the procurement in accordance with Part D of Article 3 of this Chapter, unless otherwise authorized pursuant to A.R.S. § 41-2536 or 41-2537.
C. For procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535:
    1. The agency chief procurement officer shall make the solicitation available to prospective offerors registered at the State Procurement Office for the specific material, service, or construction being solicited; and
    2. The agency chief procurement officer shall advertise at least once in a general circulation or industry trade publication. If practicable, the date of the advertisement shall be at least 14 days before the offer due date.

R2-7-505. Selection Committee

A. The agency chief procurement officer shall appoint a selection committee when required under A.R.S. § 41-2578, 41-2579, or 41-2581.
B. For the procurement of specified professional services not estimated to exceed the amount prescribed in A.R.S. § 41-2581, the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to five members who are appropriately qualified including the agency chief procurement officer as chair.
C. For the procurement of specified professional services estimated to exceed the amount prescribed in A.R.S. § 41-2578, 41-2579, or 41-2581.

§ 41-2583. Construction contracts; void provisions

A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state is against this state's public policy and is void and unenforceable.

R2-7-507. Offer Mistakes Discovered After Offer Opening and Before Award

A. If an apparent mistake, relevant to the award determination is discovered after offer opening and before award, the agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
    1. Confirm that no mistake was made and assert that the offer stands as submitted; or

2. Acknowledge that a mistake was made, and include all of the following in a written response:
    a. Explanation of the mistake and any other relevant information;
    b. A request for correction including the corrected offer or a request for withdrawal; and
    c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing, and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
2. A request for correction including the corrected offer or a request for withdrawal; and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

C. An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.

D. An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.

E. An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.

F. If the offeror fails to act under subsection (A), the offeror is considered nonresponsive and the agency chief procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

R2-7-511. Individual Job Order Contracting

A. The state procurement administrator may award or authorize an agency chief procurement officer to award job order contracts for job orders estimated to cost $1,000,000 or less.

B. An agency chief procurement officer may use job order contracting for individual job orders estimated to cost $250,000 or less, provided that:
1. The agency chief procurement officer obtains a cost estimate for the job order, before obtaining a cost proposal from the job order contractor; and
2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.

C. When authorized by the state procurement administrator, an agency chief procurement officer may use job order contracting for individual job orders estimated to cost more than $250,000 or less than or equal to $1,000,000, provided that:
1. The agency chief procurement officer obtains a cost estimate for the job order from a person as defined in A.R.S. Title 32, Chapter 1, Article 1 before requesting a cost proposal from the job order contractor; and

2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.

D. The agency chief procurement officer may request cost proposals from multiple job order contractors or negotiate with a single job order contractor.

E. The agency chief procurement officer may authorize contract change orders or amendments that result in the individual job order cost exceeding $1,000,000 only with authorization from the state procurement administrator.

F. Upon completion of the job order, the agency chief procurement officer shall document in the contract file a summary of the estimated or final costs and the reasons the award is in the best interests of the state.

G. Conduct the procurement, as necessary in accordance with R2-7-B302, R2-7-B311, R2-7-B313, and R2-7-B315, unless a modified process is approved by the state procurement administrator.

Article 6 Contract Clauses

§ 41-2585. Contract clauses

A. The director may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance or other contract provisions.

B. The director may modify clauses for inclusion in any particular state contract, provided that any variations are supported by a written determination that states the circumstances justifying the variation and provided that notice of any material variation is stated in the solicitation.

C. All contract clauses shall be consistent with the provisions of this chapter and the regulations issued pursuant to this chapter.

R2-7-601. Contract Clauses

The agency chief procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the state's interests are addressed.

R2-7-602. Assignment of Rights and Duties

A contractor shall not assign or transfer the rights or duties of a state contract without the written consent of the agency chief procurement officer.

R2-7-603. Change of Name

If a contractor requests to change the name in which it holds a state contract, the agency chief procurement officer may, upon receipt of a document indicating name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

§ 41-2552. Change order

A change order exceeding an amount or percentage established by regulation may be executed only after the director determines in writing that the change order is advantageous to this state.

R2-7-604. Contract Change Orders and Amendments

A. The agency chief procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.

B. Any contract change order or amendment or aggregate change orders or amendments of a contract not covered under subsection (A) that exceeds 25% of the original contract amount may be executed only if the state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, determines in writing that the change order or amendment is advantageous to the state and the price is determined fair and reasonable pursuant to R2-7-702.

C. The agency chief procurement officer may, in situations in which time or economic consideration preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements under A.R.S. § 41-2537.

§ 41-2544. Types of contracts

Subject to the limitations of this section, any type of contract that will promote the best interests of this state may be used, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

§ 41-2546. Multiterm contracts

A. Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time up to five years and a contract for job-order-contracting construction services may also be entered into for a period of time up to five years, as deemed to be in the best interest of this state, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Notwithstanding any other law, a contract may be entered into for materials or services for a period of time exceeding five years if, under rules adopted pursuant to this chapter, the director determines in writing that such a contract would be advantageous to this state. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

B. Before the use of a multiterm contract, it shall be determined in writing that:
   1. Estimated requirements cover the period of the contract and are reasonable and continuing.
   2. Such a contract will serve the best interests of this state by encouraging effective competition or otherwise promoting economies in state procurement.

C. If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations available for such purposes

R2-7-605. Multi-term Contracts

A. The agency chief procurement officer may enter into a contract for materials or services for a period exceeding the time identified in A.R.S. § 41-2546(A), if a written approval from the state procurement administrator is issued prior to the offer due date and time.
B. The agency chief procurement officer shall submit a request to the state procurement administrator in writing indicating:
    1. The time period requested for the contract;
    2. Documentation that the estimated requirements are reasonable and continuing;
    3. Documentation to demonstrate why more frequent competition is not practicable and that such a contract will serve the best interests of the state.
C. The agency chief procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

R2-7-606. Terms and Conditions

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

§ 41-2586. Indemnity agreements in construction and architect-engineer contracts void; definitions

A. A covenant, clause or understanding in, collateral to or affecting a construction contract or subcontract that purports to indemnify, to hold harmless or to defend the promisee of, from or against liability for loss or damage resulting from the negligence of the promisee or the promisee's agents, employees or indemnitee is against the public policy of this state and is void.
B. The regulation and use of indemnity agreements in construction and design professional services contracts are of statewide concern. The regulation of indemnity agreements in construction and design professional services contracts pursuant to this section and their use are not subject to further regulation by a county, city, town or other political subdivision of this state.
C. If a design professional provides work, services, studies, planning, surveys or other preparatory work in connection with a public building or improvement, the state purchasing agency, state governmental unit or property owner may require that the design professional services contract or subcontract require the design professional to indemnify and hold harmless the state purchasing agency, state governmental unit or property owner, and its officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such

design professional or other persons employed or used by such design professional in the performance of the contract or subcontract. A design professional services subcontract entered into in connection with a public building or improvement may also require any design professional to indemnify and hold harmless the purchasing agency, state governmental unit, or property owner and the indemnified design professional who executed the subcontract, and their respective owners, officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such design professional, or persons employed or used by the indemnifying design professional in connection with the subcontract. Nothing in this section shall prohibit the requirement of insurance coverage that complies with this section, including the designation of the state, state purchasing agency, state governmental unit or property owner as an additional insured on a general liability insurance policy or as a designated insured on an automobile liability policy provided in connection with a construction contract or subcontract or design professional services contract or subcontract.

D. A covenant, clause or understanding in, collateral to or affecting a design professional services subcontract that purports to indemnify, to hold harmless or to defend the promisee of, from or against liability for loss or damage resulting from the negligence of the promisee or the promisee's agents, employees or indemnitee is against the public policy of this state and is void.

E. Except as provided in subsection C of this section, a design professional services contract or subcontract entered into in connection with a public building or improvement shall not require that a design professional defend, indemnify, insure or hold harmless the state purchasing agency, state governmental unit or property owner or its employees, officers, directors, agents, contractors or subcontractors from any liability, damage, loss, claim, action or proceeding, and any contract provision that is not permitted by subsection C of this section is against the public policy of this state and is void.

F. Notwithstanding subsection A of this section, a contractor who is responsible for the performance of a construction contract or subcontract may fully indemnify a person, firm, corporation, state or other agency for whose account the construction contract or subcontract is not being performed and that, as an accommodation, enters into an agreement with the contractor that permits the contractor to enter on or adjacent to its property to perform the construction contract or subcontract for others.

G. If any provision or condition contained in this section conflicts with any provision of a contract between the state or a political subdivision of the state and the federal government, such provision of this section in conflict shall not apply to any construction contract or subcontract, or design professional services contract or subcontract to the extent such conflict exists, but all provisions of this section with which there is no such conflict, shall apply.

H. For the purposes of this section:

1. "Construction contract or subcontract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility, development or other improvement to land.

2. "Design professional services" means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination of those services performed by or under the supervision of a design professional or any person employed by the design professional.
3. "Design professional service contract or subcontract" means a written or oral agreement relating to the planning, design, construction administration, study, evaluation, consulting, inspection, surveying, mapping, material sampling, testing or other professional, scientific or technical services furnished in connection with any actual or proposed study, planning, survey, environmental remediation, construction, improvement, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility, development or other improvement to land.
4. "Other person employed or used" means a subcontractor to a contractor or design professional in any tier, or any other person or entity who performs work or design professional services, or provides labor, services, materials or equipment in connection with a construction contract or subcontract or design professional service contract or subcontract subject to this section.

R2-7-607. Mandatory Statewide Contracts

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

R2-7-608. Multiple Source Contracts

Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the state or the cooperative procurement members, unless authorized by the state procurement administrator.

Article 7 Cost Principals

§ 41-2591. Cost principles rules

The director shall adopt rules setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

§ 41-2543. Cost or pricing data

A. The submission of current cost or pricing data may be required in connection with an award in situations in which analysis of the proposed price is essential to determine that the price is reasonable and fair. A contractor shall, except as provided in subsection C, submit current cost or pricing data and shall certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually determined specified date before the date of either:

1. The pricing of any contract awarded by competitive sealed proposals or pursuant to the sole source procurement authority, if the total contract price is expected to exceed an amount established by department rules.
2. The pricing of any change order or contract modification which is expected to exceed an amount established by department rules.

B. Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to this state shall be adjusted to exclude any significant amounts by which this state finds that the price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed on between the parties. Such adjustment by this state may include profit or fee.

C. The requirements of this section need not be applied to contracts if any of the following applies:
   1. The contract price is based on adequate price competition.
   2. The contract price is based on established catalogue prices or market prices.
   3. Contract prices are set by law or rule.
   4. It is determined in writing in accordance with rules adopted by the director that the requirements of this section may be waived, and the reasons for the waiver are stated in writing.

R2-7-701. Cost Principles

The cost principles set forth in the Code of Federal Regulations, 48 CFR 31, (September 2001) shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. This document is incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.

R2-7-702. Determination of Fair and Reasonable Price

A. For contracts or contract modifications that exceed $100,000, the agency chief procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
   1. The contract or modification is based on adequate price competition;
   2. Price is supported by an established catalog or market prices;
   3. Price is set by law or rule; or
   4. Price is supported by relevant, historical price data.

B. The agency chief procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
   1. The agency chief procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A); or
   2. The agency chief procurement officer determines in writing that it is in the best interest of the state regardless of the amount of the contract or contract modification.

C. The agency chief procurement officer shall submit a request to the state procurement administrator to waive the requirement for submission of cost or pricing data to the state procurement administrator if the proposed contract or contract modification exceeds $100,000. The request shall be in writing and state the reasons for the waiver.

D. The state procurement administrator shall either:
   1. Issue written approval of the request for waiver;
   2. Request additional information from the agency chief procurement officer upon which to base a decision; or
   3. Deny the request.

R2-7-703. Submission and Certification of Cost or Pricing Data

A. The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the agency chief procurement officer.
B. The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.
C. The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror's or contractor's knowledge and belief as of a date mutually determined with the agency chief procurement officer.

R2-7-704. Refusal to Submit Cost or Pricing Data

A. If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the agency chief procurement officer may reject the offer.
B. If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the agency chief procurement officer may:
   1. Reject the contract modification; or
   2. Set the amount of the contract modification subject to the contractor's rights under Article 9 of the Arizona Procurement Code.

R2-7-705. Defective Cost or Pricing Data

A. The agency chief procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.
B. The agency chief procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.
C. The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under Article 9 of this Chapter. The price, as adjusted by the agency chief procurement officer, shall remain in effect until any claim is settled or resolved under Article 9 of this Chapter.

Article 8 Materials Management

§ 41-2601. Definitions

In this article, unless the context otherwise requires:

1. "Excess materials" means any materials which have a remaining useful life but which are no longer required by the using agency in possession of the materials.
2. "Nonexpendable materials" means all tangible materials which have an original acquisition cost over an amount set by regulation and a probable useful life of more than one year.
3. "Surplus materials" means any materials that no longer have any use to this state or materials acquired from the United States government. This includes obsolete materials, scrap materials and nonexpendable materials that have completed their useful life cycle.

R2-15-301. Definitions

In this Article, unless the context otherwise states:
"Capital asset" has the same meaning as "nonexpendable materials" in A.R.S. § 41-2601.
"Department" means the Department of Administration.
"Direct transfer" means the transfer of surplus or excess materials by the Surplus Property Management Office from one state governmental unit to another without physically moving the property to the Surplus Property Management Office.
"Director" means the director of the Department of Administration.
"Established markets" means those places where materials are regularly bought and sold at prices set by open competition.
"Fair market value" means the price at which sales have been consummated for materials of like type, quality, and quantity in a particular market at the time of acquisition.
"General Accounting Administrator" means the person holding the position as Administrator of the General Accounting Office, Financial Services Division of the Department of Administration.
"Posted prices" means the sale price determined by the Surplus Property Administrator to be fair market value.
"State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state. A.R.S. § 41-2503.
"State plan of operation" means the agreement for acquiring federal surplus property between the state and the United States General Services Administration.
"Surplus Property Administrator" means the person holding the position as Administrator of the Surplus Property Management Office, Management Services Division of the Department of Administration.

§ 41-2602. Material management rules

The director shall adopt rules governing:

1. The management of materials during their entire life cycle.
2. The acquisition and distribution of federal surplus materials.
3. The sale, lease or disposal of surplus materials by public auction, competitive sealed bidding or other appropriate method designated by rule.

4. The purchase of any such materials by an employee of the owning or disposing agency.
5. The transfer of excess and surplus materials.
6. The trade-in of excess or surplus materials.

R2-15-303. Disposition

A. The Surplus Property Administrator shall act on behalf of the state in all matters pertaining to the disposition of excess and surplus materials.

B. Except as specifically authorized for the Department of Public Safety under A.R.S. § 41-1713(B)(7), the Arizona Exposition and State Fair Board under A.R.S. § 3-1007(A)(1), Arizona Correctional Industries under A.R.S. §§ 41-1623(E) and 41-1624(B), and the Department of Mines and Mineral Resources under A.R.S. § 27-105(6), a state governmental unit shall not transfer, sell, trade-in, condemn, or otherwise dispose of materials owned by the state without written authorization from the Surplus Property Administrator.

C. Each state governmental unit shall notify the Surplus Property Administrator of all excess and surplus materials on forms provided by the Surplus Property Administrator. The Surplus Property Administrator shall determine the fair market value of excess and surplus materials.

D. The Surplus Property Administrator shall facilitate the transfer of excess or surplus materials to or between state agencies, political subdivisions, and eligible nonprofit institutions. The transfer document for state materials shall indicate that the recipient agrees not to transfer title or dispose of the materials within a six-month period, except for motor vehicles, which have a 12-month restriction, without prior approval of the Surplus Property Administrator.

E. Disposition of surplus materials.

1. The Surplus Property Administrator shall offer surplus materials through competitive sealed bids, public auction, online sales, established markets, or posted prices. If unusual circumstances render the above methods impractical, the Surplus Property Administrator may employ other disposition methods, including appraisal or barter, provided the Surplus Property Administrator makes a written determination that the procedure is advantageous to the state. The following methods of payment for surplus materials are accepted by the Surplus Property Administrator: a United States Postal Money Order, certified check, cashier's check, and cash. Other methods of payment may be approved by the Surplus Property Administrator if the Surplus Property Administrator determines the method to be in the best interest of the state.
2. Competitive sealed bidding. The Surplus Property Administrator shall ensure that:
    a. Sale notices are publicly available from the Surplus Property Office at least five days before the date set for opening bids;
    b. Each sale notice lists materials offered for sale, location of materials, and availability of materials for inspection, terms and conditions of sale, and instructions to bidders, including the place, date, and time set for the bid opening;
    c. Bids are opened publicly;
    d. Awards are made in accordance with the provisions of the sale notice; and
    e. Awards are made to the highest responsive and responsible bidder, provided that the price offered by the highest responsive and responsible bidder is acceptable to the Surplus Property Administrator. If the Surplus Property Administrator

determines that a bid is not advantageous to the state, the Surplus Property Administrator may reject the bid in whole or in part, resolicit bids a bid, or negotiate the sale, provided that the negotiated sale price is higher than the highest responsive and responsible bidder's price.

3. The Surplus Property Administrator shall determine whether surplus materials may be disposed of by trade-in to a vendor for credit on an acquisition. In making this determination, the Surplus Property Administrator shall consider the urgency of need by other state governmental units and whether the trade-in value is expected to exceed the value realized through the sale of the materials.
4. An employee of the owning or disposing state governmental unit shall not directly or indirectly purchase or agree with another person to purchase surplus materials if that employee is, or has been, directly or indirectly involved in the purchase, disposal, maintenance, or preparation for sale of the surplus materials.

R2-15-304. Materials Inventory Report and Submission of Contracts

A. Each state governmental unit, at the end of each fiscal year, shall prepare and submit to the General Accounting Administrator an inventory report of all materials warehoused or otherwise held by the unit, verified by a physical count and certified by the unit's highest-ranking officer, which lists all of the following:
   1. Nonexpendable materials (capital assets), capitalized in accordance with the state of Arizona Accounting Manual;
   2. Nonexpendable materials (capital assets) held under capital leases and similar financial arrangements;
   3. Nonexpendable materials (capital assets) that have been, or will be, leased or rented for more than 90 days; and
   4. Other materials warehoused or otherwise held by the units that are subject to the stewardship requirements of the state of Arizona Accounting Manual.

B. The state governmental unit shall include and identify separately in the inventory report all real property, buildings, and other improvements to real property.

C. The state governmental unit shall submit a copy of any signed capital leases and similar financial arrangements to the General Accounting Administrator within 30 days of execution.

R2-15-305. Lost, Stolen, or Destroyed Nonexpendable Materials (Capital Assets)

A. A state governmental unit shall immediately report theft of nonexpendable materials to the appropriate law enforcement agency.

B. Within 10 days after discovery, a state governmental unit shall report lost, stolen, or destroyed nonexpendable materials to the General Accounting Administrator. Based upon results of an investigation, the General Accounting Administrator may authorize the unit, in writing, to delete the missing nonexpendable materials from any internal inventory report and the AFIS Fixed Asset Subsystem (FAS). If materials are deleted from the inventory and subsequently located, the unit shall again list the materials in any internal inventory report and on the FAS.

§ 41-2603. Surplus material program

The department may acquire surplus materials from the United States government and may distribute surplus materials as may be usable and necessary for public purposes to a state governmental unit or a political subdivision.

R2-15-306. Federal Surplus Materials Program

The Surplus Property Administrator shall:

1. Prepare and file a state plan of operation with the United States General Services Administration.
2. Act on behalf of the state with any federal agencies or other surplus property agencies regarding federal surplus materials.
3. Distribute federal surplus materials to eligible entities.

§ 41-2604. Authority for transfer of material

Notwithstanding any law to the contrary, the governing board, or in case there is none, the executive head of any state governmental unit, political subdivision or nonprofit institution determined to be eligible to receive surplus materials, may confer on any officer or employee thereof continuing authority to secure the transfer to it of surplus materials and to obligate its monies to the extent necessary to comply with the laws and conditions of such transfers. The director shall adopt rules establishing guidelines for use in determining eligibility.

R2-15-307. Authority for Transfer of Materials

A. The Surplus Property Administrator shall determine whether an entity is eligible to acquire federal or state surplus materials. Eligibility for federal surplus materials is determined in accordance with federal law. The determination of whether an entity is eligible for state surplus materials is based on whether the entity:
    1. Is eligible to receive federal surplus materials, or
    2. Is a federal income tax exempt non-profit entity that is a health or educational organization as defined in federal law that has at least one full-time salaried employee and demonstrates a public benefit for receiving state surplus materials.
B. A state governmental unit shall not acquire federal or state surplus materials without the approval of the Surplus Property Administrator.

§ 41-2605. Fees and charges

The department shall make proper charges and assess proper fees for the acquisition, receipt, warehousing, rehabilitation, delivery, distribution or transfer of excess and surplus materials. Such fees and charges shall be fair and equitable and shall be based on services performed, including acquisition, receipt, warehousing, rehabilitation, delivery, distribution or transfer. A reasonable charge shall be made for maintenance and repair services.

R2-15-308. Fees and Charges

A. The Surplus Property Administrator shall determine and assess proper service and handling fees, with the approval of the Director for the acquisition, receipt, warehousing, rehabilitation, delivery, distribution, or transfer of state surplus materials. The Surplus Property Administrator shall ensure that fees are fair and equitable, based on the cost of services performed, and consistent with the continuous maintenance support requirements of the Surplus Property Management Office.
   1. The Surplus Property Administrator shall approve or deny any direct transfer of state surplus materials between state governmental units. The Surplus Property Office shall not assess a service and handling fee if a direct transfer between state governmental units can be accomplished without the use of personnel, equipment, or facilities, of the Surplus Property Management Office.
   2. For all other direct transfers of state surplus materials, the Surplus Property Administrator shall assess a service and handling fee. The receiving entity shall pay a transfer fee of 10% of the fair market value of the materials. The minimum fee is $20.00 and the maximum fee is $300.00.

B. Fees on other transfers or sales are determined according to R2-15-310.

§ 41-2606. Surplus materials revolving funds

A. The state surplus materials revolving fund is established. All monies coming into the department derived from state surplus materials fees and charges shall be placed in the state surplus materials revolving fund. All uncommitted monies in the state surplus materials revolving fund in excess of one hundred thousand dollars at the close of any fiscal year revert to the state general fund.

B. The federal surplus materials revolving fund is established. All monies coming into the department derived from federal surplus materials shall be placed in the federal surplus materials revolving fund. All uncommitted monies in the federal surplus materials revolving fund in excess of fifty thousand dollars at the close of any fiscal year shall be returned to agencies and institutions through discounted service and handling charges to eligible donees in the following fiscal year until the surplus is depleted.

C. Monies in the funds shall be available, subject to legislative appropriation, for the purpose of carrying out the provisions of this article.

R2-15-309. Surplus Materials Revolving Funds

A. The Surplus Property Administrator may, after a determination that a portion of the monies in the state surplus materials revolving fund is uncommitted for a period of three months, authorize the State Treasurer to deposit that portion of the monies in a government-insured depository institution offering a rate of return with maturity of 13 months or less from the date of purchase. All interest earned shall be credited to the revolving fund.

B. The federal surplus materials revolving fund shall be maintained in accordance with the state plan of operation.

§ 41-2607. Allocation of proceeds from sales, transfers or disposal of surplus materials

Unless otherwise provided by law, the director shall adopt rules for the allocation of proceeds from the sale, transfer, lease or disposal of excess and surplus materials.

R2-15-310. Allocation of Proceeds from Sale or Disposal of Excess or Surplus Materials

A. Except as provided in other law, subsection (B), or subsection (C), the Surplus Property Administrator shall ensure that proceeds from the disposition of excess or surplus materials are retained by the Surplus Property Office.
B. Except the Department of Public Safety, under A.R.S. § 41-1713(B)(6), the Surplus Property Office shall not reimburse a state government unit for transfer or sale of materials if the unit originally purchased the materials with General Fund monies.
C. The Surplus Property Administrator shall reimburse proceeds from the disposition of materials originally purchased with special fund monies, such as revolving, dedicated, or federal funds, less the Surplus Property Office's fee, for the material's transfer or sale, according to the following schedule. The Surplus Property Administrator shall:
    1. For direct transfer of state excess or surplus materials, collect the fee required in R2-15-308(A) and reimburse the balance of the sale proceeds to the transferring agency; or
    2. For non-direct transfer or sale of state excess or surplus materials:
        a. Reimburse nothing if the sale proceeds for an item are less than or equal to $50.00; or
        b. Reimburse at a rate of not less than 70% of the sale proceeds for an item that sells for a price greater than $50.00; and
    3. Reimburse sale proceeds after the sale is completed.

Article 9 Legal and Contractual Remedies

§ 41-2611. Rules of procedure

A. The director may adopt rules of procedure providing for the expeditious administrative review of all contract claims or controversies both before the purchasing agency and through an appeal heard before the director in accordance with chapter 6, article 10 of this title.
B. For the purposes of an expeditious administrative process, the director shall render a decision on an appeal to the director within forty-two days after the date the agency report or comments on the agency report, if applicable, are filed with the director. On agreement of all interested parties, the director may be granted an additional fourteen days to issue a decision. If the director fails to issue a decision within the time period prescribed in this subsection, the director shall refer the appeal to a hearing in accordance with chapter 6, article 10 of this title.

§ 41-2612. Subject of rules

The rules adopted by the director pursuant to section 41-2611 shall address at least the following subjects:

1. Protested solicitations and awards.
2. Vendor performance and evaluation of past performance.

3. Suspension or debarment of contractors.
4. Breach of contract controversies and contract claims.

§ 41-2613. Debarment and suspension of contractors

A. The director shall adopt rules providing for the suspension and debarment of any person from consideration for award of contracts pursuant to this chapter. If there are reasonable grounds for debarment the rules of the director may provide for the suspension of any person for not to exceed six months. A debarment shall not exceed three years.

B. The causes for debarment or suspension include the following:
   1. Conviction of any person or any subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
   2. Conviction of any person or any subsidiary or affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor.
   3. Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.
   4. Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, such as either of the following:
      (a) Knowingly fails without good cause to perform in accordance with the specification or within the time limit provided in the contract.
      (b) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
   5. Any other cause deemed to affect responsibility as a state contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity for any cause listed in rules of the director.

C. A written determination to debar or suspend shall be issued pursuant to the rules of the director which shall:
   1. State the reasons for the action taken.
   2. Inform any debarred or suspended person involved of the right to administrative review as provided in this article.

D. A copy of the decision under subsection C shall be mailed or otherwise furnished to any debarred or suspended person and to any intervening party.

§ 41-2614. Judicial review

Except as provided in section 41-1092.08, subsection H, any final decision of the director under this chapter is subject to judicial review pursuant to title 12, chapter 7, article 6 by any party to the proceeding

before the director, and the complaint seeking review shall be filed with the superior court in Maricopa county and served on the director and the purchasing agency.

§ 41-2615. Exclusive remedy

Notwithstanding any law to the contrary, including title 12, chapter 7, article 2 and title 12, chapter 21, this article and the rules adopted under this article shall provide the exclusive procedure for asserting a claim against this state or any agency of this state arising in relation to any procurement conducted under this chapter.

§ 41-2616. Violation; classification; liability; civil penalty; enforcement authority

A. A person who contracts for or purchases any material, services, construction or construction services in a manner contrary to the requirements of this chapter, the rules adopted pursuant to this chapter, the rules adopted by the state board of education pursuant to section 15-213 or rules adopted by the Arizona board of regents, the Arizona lottery commission or the judicial branch pursuant to section 41-2501 is personally liable for the recovery of all public monies paid plus twenty per cent of such amount and legal interest from the date of payment and all costs and damages arising out of the violation.
B. A person who intentionally or knowingly contracts for or purchases any material, services, construction or construction services pursuant to a scheme or artifice to avoid the requirements of this chapter, rules adopted pursuant to this chapter, rules adopted by the state board of education pursuant to section 15-213 or rules adopted by the state board of regents, the state lottery commission or the judicial branch pursuant to section 41-2501 is guilty of a class 4 felony.
C. A person who serves on an evaluation committee for a procurement shall sign a statement before reviewing bids or proposals that the person has no interest in the procurement other than that disclosed and will have no contact with any representative of a competing vendor related to the particular procurement during the course of evaluation of bids or proposals, except those contacts specifically authorized by section 41-2534, 41-2537, 41-2538, 41-2578, 41-2579 or 41-2581. The person shall disclose on the statement any contact unrelated to the pending procurement that the person may need to have with a representative of a competing vendor and any contact with a representative of a competing vendor during evaluation of bids or proposals except those contacts specifically authorized by section 41-2534, 41-2537, 41-2538, 41-2578, 41-2579 or 41-2581. A person who serves on an evaluation committee and who fails to disclose contact with a representative of a competing vendor or who fails to provide accurate information on the statement is subject to a civil penalty of at least one thousand dollars but not more than ten thousand dollars.
D. The attorney general on behalf of this state shall enforce the provisions of this chapter.

§ 41-2617. Contracts for procurement of construction; delay; recovery of damages by contractor

A contract for the procurement of construction shall include a provision which provides for negotiations between the state governmental unit and the contractor for the recovery of damages related to expenses incurred by the contractor for a delay for which the state governmental unit is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the

contract. This section shall not be construed to void any provision in the contract which requires notice of delays, provides for arbitration or other procedure for settlement or provides for liquidated damages.

Part A. Protest of Solicitations and Contract Awards

R2-7-A901. Protest of Solicitations and Contract Awards

A. Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
B. The interested party shall file the protest in writing with the agency chief procurement officer, with a copy to the state procurement administrator, and shall include the following information:
    1. The name, address and telephone number of the interested party;
    3. The signature of the interested party or the interested party's representative;
    4. Identification of the purchasing agency and the solicitation or contract number;
    5. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
    6. The form of relief requested.
C. If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
D. In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the agency chief procurement officer makes the procurement file available for public inspection.
E. The interested party may submit a written request to the agency chief procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the purchasing agency that resulted in the interested party being unable to submit the protest within the 10 days. The agency chief procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted set forth a new date for submission of the filing.
F. If the interested party shows good cause, the agency chief procurement officer may consider a protest that is not timely filed.
G. The agency chief procurement officer shall immediately give notice of a protest to all offerors.

R2-7-A902. Stay of Procurements During the Protest

A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the agency chief procurement officer shall make a written determination to either:
    1. Proceed with the award or contract performance, or
    2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state.
B. The agency chief procurement officer shall provide the interested party, state procurement administrator, and other interested parties with a copy of the written determination.

C. The agency chief procurement officer may stay all or part of the procurement if it is determined that there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state. Determination of the stay decision shall be issued no later than the time of issuance of a procurement officer's decision in accordance with R2-7-A903.

D. Should the stay request be denied by the agency chief procurement officer the protestant may request a procurement stay from the state procurement administrator. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the agency chief procurement officer.

R2-7-A903. Resolution of Solicitation and Contract Award Protests

The agency chief procurement officer has the authority to resolve a protest.

A. The agency chief procurement officer shall issue a written decision within 14 days after a protest has been filed under R2-7-A901. The decision of the agency chief procurement officer shall contain the basis for the decision and a statement that the decision may be appealed to the Director within 30 days from receipt of the decision.

B. The agency chief procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator and the director.

C. The agency chief procurement officer may submit a written request to the director for an extension of the time limit for decisions under subsection (B). The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the decision, not to exceed an additional 30 days. The director shall notify the agency chief procurement officer, the interested party, and the state procurement administrator in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.

D. If the agency chief procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the agency chief procurement officer had issued an adverse decision.

R2-7-A904. Remedies by the Agency Chief Procurement Officer

A. If the agency chief procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the agency chief procurement officer shall implement an appropriate remedy.

B. In determining an appropriate remedy, the agency chief procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:

1. The seriousness of the procurement deficiency;
2. The degree of prejudice to other interested parties or to the integrity of the procurement system;
3. The good faith of the parties;
4. The extent of performance;
5. The costs to the state;

6. The urgency of the procurement;
7. The impact on the agency's mission; and
8. Other relevant issues.

C. An agency chief procurement officer may implement any of the following appropriate remedies:
1. Decline to exercise an option to renew under the contract;
2. Terminate the contract;
3. Amend the solicitation;
4. Issue a new solicitation;
5. Award a contract consistent with procurement statutes and regulations; or
6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

R2-7-A905. Appeals to the Director

A. An interested party may appeal the decision entered or deemed to be entered by the agency chief procurement officer to the director within 30 days after the date the decision is received or deemed received under R2-7-A903. The interested party shall file a copy of the appeal with the director, the agency chief procurement officer, and the state procurement administrator.

B. The interested party shall file the appeal in writing and shall include the following information:
1. The information prescribed in R2-7-A901(B) including the identification of confidential information under R2-7-103;
2. A copy of the decision of the agency chief procurement officer; and
3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.

C. The director may consider any appeal that is not filed timely if:
1. The interested party shows good cause; or
2. The director finds there is good cause.

R2-7-A906. Notice of Appeal to the Director

A. The agency chief procurement officer shall promptly give notice of the appeal to all offerors.

B. The director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R2-7-103.

R2-7-A907. Stay of Procurement During Appeal to Director

A. If a stay is issued under R2-7-A902, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the state.

B. Following a review of the agency chief procurement officer's or the state procurement officer's decision and the interested party's appeal, the director may stay the procurement if the director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the state.

R2-7-A908. Agency Report

A. The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The agency chief procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
   1. The appeal;
   2. The offer submitted by the interested party;
   3. The offer of the firm that is being considered for award;
   4. The solicitation, including the specifications or portions relevant to the appeal;
   5. The abstract of offers or relevant portions;
   6. Any other documents that are relevant to the protest; and
   7. A statement by the agency chief procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

B. The agency chief procurement officer may submit a written request to the director for an extension of the time period for filing the report as prescribed in subsection (A), identifying the reason for extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The director shall notify the agency chief procurement officer, the state procurement administrator, and the interested party in writing that the time for the submission of the report is extended, providing the date on which the report must be submitted.

C. The interested party shall file comments on the agency report with the director within 10 days after receipt of the report. The interested party shall provide copies of the comments to the agency chief procurement officer, the state procurement administrator, and other interested parties.

D. The interested party may submit a written request to the director for an extension of the period for submission of comments, identifying the reasons for the extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments. The director shall notify the agency chief procurement officer and the state procurement administrator of any extension.

R2-7-A909. Remedies by the Director

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

R2-7-A910. Informal Settlement Conference

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

R2-7-A911. Dismissal Before Hearing

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

R2-7-A912. Hearing

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

Part B. Contract Claims

R2-7-B901. Controversies Involving Contract Claims Against the State

A. A claimant shall file a contract claim with the agency chief procurement officer, with a copy to the state procurement administrator, within 180 days after the claim arises. The claim shall include the following:
    1. The name, address, and telephone number of the claimant;
    2. The signature of the claimant or claimant's representative;
    3. Identification of the purchasing agency and the solicitation or contract number;

4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
5. The form and dollar amount of the relief requested.

B. The agency chief procurement officer shall have the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.

R2-7-B902. Agency Chief Procurement Officer's Decision

A. If a claim cannot be resolved under R2-7-B901, the agency chief procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the agency chief procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.

B. The agency chief procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. The decision shall include:
   1. A description of the claim;
   2. A reference to the pertinent contract provision;
   3. A statement of the factual areas of agreement or disagreement;
   4. A statement of the agency chief procurement officer's decision, with supporting rationale;
   5. A paragraph which substantially states: "This is the final decision of the agency chief procurement officer. This decision may be appealed to the director of the Department of Administration. If you appeal, you must file a written notice of appeal containing the information required in R2-7-B904(B) with the director within 30 days from the date you receive this decision."

R2-7-B903. Issuance of a Timely Decision

If the agency chief procurement officer fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.

R2-7-B904. Appeals and Reports to the Director

A. The claimant may appeal the final decision of the agency chief procurement officer to the director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the director, the agency chief procurement officer, and the state procurement administrator.

B. The claimant shall file the appeal in writing and shall include the following:
   1. A copy of the decision of the agency chief procurement officer;
   2. A statement of the factual areas of agreement or disagreement; and
   3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.

C. The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other

method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the agency chief procurement officer's decision, if applicable, and any other documents that are relevant to the claim.

D. The director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

R2-7-B905. Controversies Involving State Claims Against the Contractor

If the agency chief procurement officer is unable to resolve, by mutual agreement, a claim asserted by the state against a contractor, the agency chief procurement officer shall promptly refer the matter in writing to the director for resolution under A.R.S. § 41-1092.07. The agency chief procurement officer shall furnish a copy of the claim to the state procurement administrator.

Part C. Debarments and Suspensions

R2-7-C901. Authority to Debar or Suspend

The director has the sole authority to debar or suspend a person from participating in state procurements under A.R.S. § 41-2613.

R2-7-C902. Initiation of Debarment

Upon receipt of information concerning a possible cause for debarment, the director shall investigate the possible cause. If the director has a reasonable basis to believe that a cause for debarment exists, the director may propose debarment under R2-7-C904.

R2-7-C903. Period of Debarment

A. The director shall not establish the period of time for a debarment that exceeds three years from the date of the debarment determination.

B. If debarment is based solely upon debarment by another governmental agency, the director may establish that the period of debarment is to run concurrently with the period established by the other debarring agency.

R2-7-C904. Notice of Debarment and Hearing

A. If debarment is proposed, the director shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, or any other method that provides evidence of receipt. The notice shall state that the person and affected affiliates have the right to a hearing to contest the proposed debarment.

B. The person proposed for debarment and any affected affiliates shall file a written request for a hearing within 10 days of receipt of the director's notice of proposed debarment.

C. The hearing shall be conducted as a contested case under A.R.S. §§ 41-1092.07 and 41-2613.

R2-7-C905. Imputed Knowledge

A. The director may attribute improper conduct to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
B. The director may attribute improper conduct of a person or its affiliate having a contract with a contractor to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

R2-7-C906. Reinstatement

A. The director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.
B. Any debarred person may request reinstatement by submitting a petition to the director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
C. The director may require a hearing on the request for reinstatement.
D. The director shall make a written decision on reinstatement within 30 days after the request is filed and specify the factors on which it is based.
E. Reinstatement decisions by the director are not subject to administrative review.

R2-7-C907. Limited Participation

The director may allow a debarred person to participate in state contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the state. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

R2-7-C908. Suspension

A. If the director determines that reasonable grounds for debarment exist, the director may suspend a person from receiving any award under R2-7-C910.
B. For purposes of suspension, a person's conduct may be attributed to an affiliate or another person under R2-7-C905.
C. The director shall not suspend a person pending debarment unless compelling reasons require suspension to protect state interests.

R2-7-C909. Period and Scope of Suspension

Unless otherwise agreed to by the parties, the director shall not implement a period of suspension of more than 35 days without satisfying the notice requirements of R2-7-C910.

R2-7-C910. Notice, Hearing, Determination, and Appeal

A. The director shall notify the person suspended by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
B. The notice of suspension shall state:
    1. The basis for suspension;
    2. The period, including dates, of the suspension;
    3. That offers received from the person will not be considered; and
    4. That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the director within 30 days after receipt of the notice.
C. Within 30 days receipt of the notice of suspension, the suspended party may file a written request for hearing with the director. The appeal shall include the following information:
    1. A copy of the decision of the director; and
    2. The precise factual or legal error in the decision from which the appeal is taken.
D. The suspension shall be resolved as an appealable agency action under A.R.S. §§ 41-1092.03 and 41-2613.

R2-7-C911. Master List

A. The director shall maintain a master list of debarments, suspensions, and voluntary exclusions under this Article.
B. The master list shall show at a minimum, the following information:
    1. The names and vendor numbers of those persons whom the state has debarred or suspended under this Article;
    2. The statutory authority for the action;
    3. The period of debarment or suspension, including the expiration date;
    4. The name of the debarring or suspending agency, if the state's debarment or suspension is based on debarment or suspension by another governmental agency; and
    5. A separate section listing persons voluntarily excluded from participation in state contracts.

Part D. Hearing Procedures

R2-7-D901. Hearings

If a hearing is required or permitted under this Chapter, the director shall refer the matter to the Office of Administrative Hearings for findings of fact, conclusions of law, and a recommended decision. The director may also direct the parties to engage in settlement negotiations or alternative dispute resolution procedures before referring the matter for a hearing.

R2-7-D902. Rehearing of Director's Decision

A. Any person, including an agency chief procurement officer, who is aggrieved by the director's decision may file a written request for rehearing of the decision under A.R.S. § 41-1092.09.
B. The director, within the time for filing a request for rehearing under this rule, may upon the director's own initiative, order a rehearing for any reason for which a rehearing may have been granted on request of a party.

Article 10 Intergovernmental Procurement

§ 41-2631. Definitions

In this article, unless the context otherwise requires:

1. "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.
2. “External procurement activity” means any buying organization not located in this state that would qualify as a public procurement unit.
3. "Local public procurement unit" means any political subdivision, any agency, board, department or other instrumentality of such political subdivision and any nonprofit corporation created solely for the purpose of administering a cooperative purchase under this article.
4. "Nonprofit corporation" means any nonprofit corporation as designated by the internal revenue service under section 501(c)(3) through 501(c)(6) or under section 115, if created by two or more local public procurement units, and includes certified nonprofit agencies that serve individuals with disabilities as defined in section 41-2636.
5. "Public procurement unit" means either a local public procurement unit, the department, any other state or an agency of the United States.

§ 41-2632. Cooperative purchasing authorized; definitions

A. Any public procurement unit may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, professional services, construction or construction services with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. The cooperative purchasing may include joint or multiparty contracts between public procurement units and open-ended public procurement unit contracts that shall be available to local public procurement units. A nonprofit corporation may enter into an agreement pursuant to this section if one or more of the parties involved is a public procurement unit. An agreement entered into as provided in this article is exempt from section 11-952, subsection D. Parties under a cooperative purchasing agreement may:
   1. Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services or construction.
   2. Cooperatively use materials or services.
   3. Commonly use or share warehousing facilities, capital equipment and other facilities.
   4. Provide personnel, except that the requesting public procurement unit shall pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.
   5. On request, make available to other public procurement units informational, technical or other services or software that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational, technical or other services or software has the right to request reimbursement for the reasonable and necessary costs of providing these services or software.

6. Pursuant to the rules for cooperative purchasing adopted by the director, purchase materials, services, professional services, construction or construction services under the terms of a contract between a vendor and a public procurement unit or an external procurement activity without complying with the requirements of sections 41-2533, 41-2534 and 41-2535.

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

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

D. A nonprofit corporation operating as a public procurement unit under this section, on request of the auditor general, shall provide to the auditor general all documentation concerning any cooperative purchasing transaction the public procurement unit administers under this section.

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

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

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

H. For the purposes of this section:

1. "Construction services" has the same meaning prescribed in section 41-2503.
2. "Professional services" has the same meaning prescribed in section 41-2578.

R2-7-1001. Approval to Enter into a Cooperative Purchasing Agreement

A. Agency chief procurement officers may use Arizona state contracts without a cooperative purchasing agreement.

B. Agency chief procurement officers shall submit a written request to the state procurement administrator before participating in a cooperative purchasing agreement with another public procurement unit or group of public procurement units. The written request for approval shall specify the manner which the administering public procurement unit complies with A.R.S. § 41-2634.

C. The state procurement administrator shall either:

1. Issue written approval, with any conditions or restrictions;
2. Request additional information from the state government unit; or
3. Deny the request.

R2-7-1002. Cooperative Purchasing Agreement Administered by an Agency Chief Procurement Officer

A. An agency chief procurement officer shall ensure that any cooperative purchasing agreement administered for use by other eligible procurement units under A.R.S. § 41-2632 provides that:

1. Payment for materials or services and inspection and acceptance of materials or services are the responsibility of the using eligible procurement unit;
2. Failure of an eligible procurement unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require the state to exercise rights or remedies;
3. The exercise of any rights or remedies by the eligible procurement unit shall be the exclusive obligation of that unit. The state, as the contract administrator and without subjecting itself to any liability, may join in the resolution of any controversy;
4. The eligible procurement unit shall not use an Arizona state contract as a method for obtaining additional concessions or reduced prices for similar material or services; and
5. An agency chief procurement officer may terminate without notice any cooperative purchasing agreement if the eligible procurement unit fails to comply with the terms of the contract.

B. The state procurement administrator may authorize a state governmental unit to establish an Arizona state contract which may be used by designated eligible procurement units.

§ 41-2633. Use of payments received by a supplying public procurement unit

All payments received by a public procurement unit supplying personnel or services shall be available to the supplying public procurement unit to defray the cost of the cooperative program.

§ 41-2634. Public procurement units in compliance with chapter requirements

If the public procurement unit administering a cooperative purchase complies with the requirements of this chapter, any public procurement unit participating in such a purchase is deemed to have complied with this chapter. Public procurement units may not enter into a cooperative purchasing agreement for the purpose of circumventing this chapter.

§ 41-2635. Contract controversies

A. Under a cooperative purchasing agreement in which this state is a party, controversies arising between an administering public procurement unit and its bidders, offerors or contractors shall be resolved in accordance with article 9 of this chapter.
B. Any local public procurement unit which is not subject to article 9 of this chapter may enter into an agreement with a public procurement unit to establish procedures or use such unit's existing procedures to resolve controversies with contractors, whether or not such controversy arose from a cooperative purchasing agreement.

Set-Aside Procurement Program

§ 41-2636. Procurement from Arizona industries for the blind, certified nonprofit agencies that serve individuals with disabilities and Arizona correctional industries; definitions

A. The director shall appoint a state set-aside committee to determine those materials and services that are provided, manufactured, produced and offered for sale by Arizona industries for the blind, certified nonprofit agencies that serve individuals with disabilities and Arizona correctional

industries and that satisfy the requirements of state governmental units and to establish a fair market price for all approved materials and services offered for sale that meet these requirements. Membership shall include the assistant director for rehabilitation services in the department of economic security or the assistant director's designee and a private sector businessperson appointed by the governor who contracts or employs persons with disabilities in the private sector. At each quarterly meeting the director shall report on new procurement requests or renewal of existing procurement requests for state purchases from lists supplied by set-aside providers and that are within the capability of and that can be supplied by the entities that are prescribed in this section. To qualify for set-aside contracts, certified nonprofit agencies must maintain an employment ratio of at least sixty per cent of program employees with significant disabilities.

B. Materials and services from Arizona correctional industries shall be presented to the committee for approval. Office products, vinyl binders and furniture refurbishing services shall be exempt from this article. State governmental units shall purchase office products, vinyl binders and furniture from Arizona correctional industries if each of the following applies:
    1. Such materials and services are readily available.
    2. Such materials and services are capable of timely delivery.
    3. Such materials and services are of equal quality and price for these same materials and services in the private sector.

C. State governmental units shall purchase approved materials and services if such materials and services are readily available.

D. Notwithstanding the requirements of section 41-2532, state governmental units and local public procurement units may purchase or contract for any products, materials and services directly from Arizona industries for the blind, certified nonprofit agencies that serve individuals with disabilities and Arizona correctional industries without competitive bidding if the delivery and quality of the products, materials or services meet the unit's reasonable requirements.

E. All state governmental units shall endeavor to set aside at least one per cent of their new purchases or contracts for any products, materials and services from the entities that are prescribed in subsection D of this section, except for contracts for care and services for clients of the department of child safety, the department of economic security or the department of health services. The department shall communicate with each state governmental unit regarding its responsibility to comply with this subsection. The committee shall meet quarterly to report progress in increasing state governmental purchases or contracts with the entities that are prescribed in subsection D of this section. The committee shall compile quarterly reports detailing new purchases or contracts that are entered into pursuant to this subsection to the director, each committee member, the governor, the president of the senate and the speaker of the house of representatives.

F. The committee shall meet during the first month of each fiscal year to determine which articles, products or services Arizona correctional industries, certified nonprofit agencies that serve individuals with disabilities and Arizona industries for the blind should continue to manufacture for state use, to advise such agencies and industries of any changes in specifications and to identify new articles or products that should be manufactured or could be eligible for procurement.

G. For the purposes of this section:
   1. "Certified nonprofit agency that serves individuals with disabilities" means a nonprofit activity center that serves individuals with significant disabilities and that satisfies all of the following:
      (a) Is organized under the laws of this state or another state, is operated in the interest of individuals with disabilities and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual.
      (b) Complies with any applicable occupational health and safety standard required by the laws of the United States and this state.
   2. "Individuals with disabilities" means an individual who, because of the nature of the individual's disabilities, is not able to fully participate in competitive employment and for whom specialized employment and training are necessary by a qualified nonprofit organization through the department of economic security or the department of health services.

R2-7-1003. Purchasing from a Cooperative Contract

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

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

A. The director shall appoint a committee as required by A.R.S. § 41-2636.
B. The committee shall be comprised of at least seven members, including the committee chair, representing:
   a. Arizona Correctional Industries ("ACI");
   b. Arizona Industries for the Blind ("AIB");

c. Certified nonprofit agency that serves individuals with disabilities (CNAID) as defined in A.R.S. § 41-2636(G);
d. Other public procurement units.

C. The state procurement administrator or the state procurement administrator's designee shall chair the committee.
D. The committee chair may appoint sub-committees to assist in the evaluation of materials and services under consideration by the committee as a set-aside.
E. The committee shall meet at least once each fiscal year quarter to report compliance with A.R.S. § 41-2636(F).

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

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

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

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

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

A. ACI, AIB, and CNAID shall submit the information to the committee to request approval of the material or service for mandatory set-aside use. The applicant shall also include the following information:
    1. A description of the specific material or service;
    2. The pricing offered;

3. Documentation that the pricing offered is fair market pricing; and
4. Information regarding availability.

B. The committee shall evaluate each offered material or service to determine:
1. The existence and extent of a need within state governmental units for the material or service;
2. The ability to produce and deliver the material or service to meet the reasonable requirements of the state governmental units; and
3. Whether the offered price for the material or service is reasonable.

C. The committee may:
1. Approve the requested material or service for use as a mandatory set-aside contract;
2. Establish a sub-committee to study and make a recommendation on the request;
3. Request additional information;
4. Deny the request; or
5. Designate the material or service as available for optional use by a state governmental unit or local public procurement unit under A.R.S. § 41-2636(E).

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

A. The State Procurement Office or the agency chief procurement officer designated by the state procurement administrator shall enter into a contract as directed by the committee. Such contracts shall not exceed five years, including any renewal options.

B. Contracts may be renewed as follows:
1. For mandatory state contracts, if the State Procurement Office makes an initial determination that the criteria set forth in R2-7-1007(B) are no longer being met, it shall refer the matter to the committee for a final determination.
2. The committee may:
a. Approve the contract renewal;
b. Establish a sub-committee to study and make a recommendation on contract renewal;
c. Request additional information;
d. Deny the contract renewal; or
e. Take other action as may be appropriate.

C. The State Procurement Office or agency chief procurement officer designated by the state procurement administrator shall take action as directed by the committee.

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

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

B. Contracts awarded under this Section, shall not exceed five years, including any renewal options.

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

A. Any interested party may dispute any committee decision.
B. An interested party shall submit the dispute of a committee decision to the committee chair in writing and shall include:
    1. Name, address, and telephone number of the person submitting the dispute;
    2. Signature of the person or the person's representative;
    3. Identification of the set-aside application disputed;
    4. A detailed statement of the legal and factual grounds for the dispute including copies of relevant documents; and
    5. The form of relief requested.
C. A dispute of a set-aside application shall be filed with the committee chair through the State Procurement Office within 14 days after the person who submits the dispute knows or should have known the basis of the dispute.
D. The committee chair shall promptly give written notice of the dispute to the set-aside applicant and the committee.
E. The committee chair shall resolve the dispute. The committee chair shall issue a written decision within 14 days after the date the dispute has been filed. If the committee chair fails to issue a decision within 14 days, the person who submits the dispute may proceed as if the dispute has been denied.
F. An appeal of the decision of the committee chair shall be made to the director under R2-7-A905, substituting “committee chair” for “agency procurement officer.”

§ 41-2637. Compliance with federal requirements

If a procurement involves the expenditure of federal assistance or contract monies, the director shall comply with federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this chapter.

Article 12 State Agency Recycling Materials Procurement Program

§ 41-2661. State agency office paper recycling

A. For purposes of this article, the definitions found in section 49-831 apply to this article.
B. The department shall require that all state governmental units, including universities, establish a program for the recycling of all wastepaper generated by those units including, at a minimum, high grade office paper and corrugated paper. Under the program, each unit shall ensure the separate collection of approximately fifty per cent of the office wastepaper generated by each unit not later than November 1, 1991.
C. The department shall establish procedures for collecting and storing the wastepaper containers to be used in this program.
D. The department shall administer the contracts with buyers of wastepaper.
E. On or before January 31 of each year, the director of the department of administration shall evaluate the amount of wastepaper recycled by state governmental units and make all necessary modifications to the administration of the program to maximize the amount of wastepaper that is effectively and practicably recycled.

§ 41-2662. State agency purchase of recycled materials

A. The purchase of paper or paper products for use by various agencies and departments of state government shall be in accordance with this chapter. If a state agency purchases or causes the purchase of printing on recycled paper pursuant to this section, it shall require the printed material to include a printed statement or symbol which indicates that the document is printed on recycled paper. This subsection does not apply to the purchase of paper containers for food or beverages.

B. Not later than November 1, 1991 and annually thereafter, the director shall report to the governor and the legislature on the following:
   1. Methods and results of the purchase of paper and other recycled materials.
   2. Findings and recommendations regarding definitions and bid specifications in state procurement contracts.
   3. Availability, performance, appropriate uses, markets and price of paper and other recycled material.
   4. Potential state agency demand for and feasibility of cooperative purchases with political subdivisions.
   5. Appropriate record keeping and reporting mechanisms.
   6. Other similar matters of program design and administration.

Article 13 On-Line Bidding

§ 41-2671. Definitions

In this article, unless the context otherwise requires:

1. "Information services" means data processing, telecommunications and office systems technologies and services.
2. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.
3. "On-line bidding" means a procurement process in which public agencies receive vendors' bids for goods, services, construction or information services electronically over the internet in a real-time, competitive bidding event.

§ 41-2672. On-line bidding

A. If a procurement officer determines that electronic, on-line bidding is more advantageous than other procurement methods provided in this chapter, a procurement officer may use on-line bidding to obtain bids electronically for the purchase of goods, services, construction and information services.

B. An on-line bidding solicitation must designate an opening date and time.

C. The closing date and time for an on-line solicitation may be fixed or remain open depending on the structure of the item being bid on line. Information regarding the closing date and time must be included in the solicitation. At the opening date and time, the purchasing agency must begin accepting on-line bids and must continue accepting bids until the bid is officially closed.

D. All on-line bids must be posted electronically and updated on a real-time basis.

E. Purchasing agencies may:
   1. Require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the solicitation.
   2. Prequalify bidders and allow only those bidders who are prequalified to submit bids on line.

F. Purchasing agencies retain their existing authority to determine the criteria that will be used as a basis for making awards.

G. Sections 41-2533 and 41-2534 do not apply to solicitations issued pursuant to this section, except that:
   1. All bids submitted electronically through an on-line bidding process are public information and are subject to the same public disclosure laws that govern bids received through the sealed bid process.
   2. All remedies available to purchasing agencies and to bidders through the sealed bid process under this chapter are also available to purchasing agencies and bidders in an on-line bidding process.

§ 41-2673. State electronic commerce fund

A. The state electronic commerce fund is established consisting of monies appropriated by the legislature and any gifts, grants or devises for the benefit of the fund. The department shall administer the fund. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. Monies in the fund shall be used to help finance electronic commerce initiatives by purchasing agencies if other funding mechanisms do not exist or cannot be used. The department shall disburse monies in the fund to purchasing agencies based on agency requests and statewide electronic commerce priorities.

C. If a purchasing agency realizes savings through implementation of its electronic commerce initiative funded by the state electronic commerce fund, the purchasing agency shall repay the fund the amount of monies originally disbursed to the agency plus ten per cent of the agency savings. The purchasing agency may retain the remainder of the savings generated through its electronic commerce initiative.

D. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

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