



ARIZONA DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT OFFICE

TECHNICAL BULLETIN No. 004

TITLE **Arizona Set-Aside Procurement Program**
REVISION **Number 5**
DATE **July 8, 2019**

I. Authority

A. Applicable Statute

- | | |
|-------------------------|---|
| <u>A.R.S. § 41-2511</u> | Authority of the director |
| <u>A.R.S. § 41-2512</u> | Delegation of authority or functions by the director |
| <u>A.R.S. § 41-2636</u> | Procurement from Arizona industries for the blind, certified nonprofit agencies that serve individuals with disabilities and Arizona correctional industries; definitions |

B. Applicable Administrative Code

- | | |
|-------------------------|---|
| <u>A.A.C. R2-7-201</u> | State Procurement Administrator: Duties and Qualifications |
| <u>A.A.C. R2-7-202</u> | Delegation of Procurement Authority to State Governmental Units |
| <u>A.A.C. R2-7-1008</u> | Contract Awards Directed by the Committee
[EXPIRED] |
| <u>A.A.C. R2-7-1009</u> | Contract Awards Initiated by an Agency Chief
Procurement Officer or Local Public Procurement
Unit |

II. Definitions

- A. Nonprofit corporation. Is 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. [Source: A.R.S. § 41-2631]
- B. Procurement Officer. Any person duly authorized to enter into and administer contracts and make written determinations with respect to the contracts. Includes an authorized representative acting within the limits of the authorized representative's authority. [Source: A.R.S. § 41-2503]
- C. Set-Aside Agency. Means the Arizona industries for the blind, certified nonprofit agencies that serve individuals with disabilities and Arizona correctional industries. [Source: A.R.S. § 41-2636]

III. Policy

- A. Purpose. The purpose of this policy is to place a deliberate emphasis to support, encourage, and increase purchases from set-aside agencies when mandatory state contracts do not meet the state governmental unit's need. As a routine

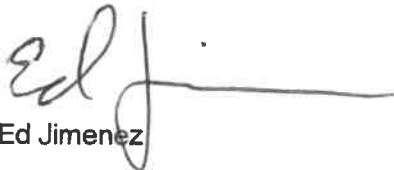
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practice, procurement officers should first consider the use of set-aside agency products or services before utilizing other procurement methods.

- B. Due Diligence. State governmental units electing to utilize the set-aside procurement program shall employ appropriate diligence to ensure that:
 - 1. The delivery and quality of the product, material or service can meet the state governmental unit's reasonable requirements;
 - 2. The price of the product, material or service is fair and reasonable before initiating a direct purchase.
- C. Eligible Entities. Any local public procurement unit may use the set-aside procurement program at their discretion.
- D. Set-Aside Manual. Committee business and processes shall be conducted as outlined in the Set-Aside Manual attached as Exhibit 1 to this Technical Bulletin.

IV. Effective

This Technical Bulletin is hereby authorized and effective this 8th day of July 2019, unless otherwise revised or repealed.



Ed Jimenez

State Procurement Administrator
Assistant Director, State Procurement Office

EXHIBIT 1



State of Arizona Set-Aside Committee Manual V1.0 07/08/19

The purpose of this manual is to provide additional guidance to new members of the committee, interested nonprofit entities desiring to participate in the Set-Aside program, and interested members of the public at large regarding key committee topics and roles. Additional detail can be found by referring to the committee's enabling legislation (A.R.S. § 41-2636) and pertinent administrative code (A.A.C. R2-7-1004 through 1010).

Education

The Set Aside committee and the State Procurement Office (SPO) have a responsibility to educate participants and state agencies about the possibilities and requirements of the program. This includes ensuring state agencies endeavor to spend 1% of their new contracts and purchases with certified nonprofit agency (CNA) vendors and assisting those vendors with understanding the certification and application process.

Standard presentations have been developed to assist in informing the state agencies of the program. These presentations should be reviewed and updated annually as necessary. The SPO staff member and committee members should create a calendar each year to present the program information to interested parties. This ensures that the availability and purpose of the program is consistently disseminated to all state agencies and assists in support of the metrics established for the program.

Training opportunities are provided by SPO on the eProcurement system. Training CNA vendors on the registration process and functionality of the system is key to ensuring state agencies can find the contract information for use. Contracts awarded by the committee can be either statewide or agency specific. Either way, the information is entered into the eProcurement system for the state as is every other contract for use. By ensuring the CNAs are familiar with the system, the process for awarding and administering contracts remains stress free and efficient. SPO should also provide regularly scheduled training on what it means to be certified, how to become certified, and how to apply for contracts through the Set-Aside Program.

Information about the program, vendors, committee members, meeting minutes and agendas, contracts, and forms can be found on the SPO website. This one central location is accessible 24/7 for CNAs, state agencies, and interested parties to obtain information regarding the program and its participants. By having all of the current information in one location committee members and SPO can direct inquiries to the webpage, have a repository for all official forms, and maintain the public record for the activity of the committee. Maintaining the website is the responsibility of the SPO staff member and should be reviewed and updated quarterly after each meeting.

Vendors

Vendors who are non-profit organizations serving individuals with disabilities as defined in A.R.S. § 41-2636 are eligible to apply for certification under the Set-Aside Program. Once certified as

a CNA, the vendor is eligible to apply for contracts with the State outside of a competitive environment. This process recognizes that companies who employ individuals with disabilities are at a competitive disadvantage in a competitive market based on the labor category and seeks to provide an opportunity for state business as well as support for vocational rehabilitation processes.

Certification

To request certification, an application must be presented to the committee for review and approval. Certification as a CNA does not mean the organization has a contract with the State. It means the organization is qualified in accordance with the statute definition and may apply for contracts through the committee. It is highly recommended that vendors seeking certification review the application form available on the state website and work with the SPO staff member to obtain information regarding the program and committee schedule prior to applying. It is also beneficial that vendors seeking certification or re-certification obtain training in the State's eProcurement system. CNA organizations should re-certify every three (3) years. This ensures that changes in the organization and program are validated as compliant, and allows for consideration of vendor performance (including any formal complaints). SPO will provide advance notification to CNAs of the need to recertify to prevent lapses in certifications.

Use of the eProcurement system

The State has utilized an electronic eProcurement system since 2010. All information, contract submissions, contract administrative activities and state ordering is accomplished through this system. It is the system of record for all state and agency contracts awarded under the Arizona Procurement Code. If awarded a contract, documents will be created in the eProcurement system for all agencies and political subdivisions to access. The successful CNA vendor will need to understand how to acknowledge the award and any other contract administrative process. The SPO offers training on the registration process, navigation and using the state system for vendors. This training can be found at <https://spo.az.gov/app/supplier/overview>.

Upon obtaining certification CNAs should review the types of contracts for materials and services the State has in place. This will provide a framework of reference regarding the State's needs. If a current contract exists for a good or service the CNA can provide, information regarding price, quantity, terms and conditions and the term of the contract is available in the system and reviewing this information is advised. This will inform the CNA of the current operational and competitive environment. At this point the CNA can determine if a feasibility review for a set-aside contract is warranted. Not all goods and services provided by CNAs are needed by the State. It is always a good idea to review the current contract environment to identify a need.

Feasibility

If a CNA has determined they have the ability to provide a good or service under the Set-Aside Program, the first step in trying to obtain a statewide contract is submitting a feasibility application. The feasibility application provides the CNA an opportunity to present basic information to the Set-Aside Committee to show interest and obtain initial feedback on the application. The feasibility application and instructions can be found at <https://spo.az.gov/procurement-services/set-aside/set-aside-resources>, and includes pertinent information such as good(s)/service(s) offered, competitive benchmark rates, impact on current State contracts, target/anticipated State customers, economic

development for qualified populations the committee serves, and volume. The feasibility form is reviewed by the SPO staff and later presented to the committee. The committee provides direction to the CNA regarding the need for the good or service, the perceived ability to provide the good or service, the support for the contract style requested (mandatory or permissive) and a review of pricing. During the review, the committee can ask questions, clarify information and potentially redirect the CNA in preparing to submit a request for a contract. This review is meant to provide assistance and guidance to the CNA as they prepare to submit. The committee can approve, reject, or request additional information on the feasibility application. If the feasibility application is approved a completed Agency Proposal Form (or Contract Amendment Form) shall be presented to the committee for consideration at the next regularly scheduled meeting. Feasibility forms are not required for contracts for goods or services that have been previously reviewed and approved, and are being brought before the committee for new contract award due to the existing contract's maximum term limits have been reached.

Agency Proposal Form

An Agency Proposal Form is a formal request by a CNA for a contract. This application includes all of the information from the feasibility application, any additional information requested by the committee, a financial breakdown of the pricing and cost, documentation of the types and number of jobs created by the contract, a description of the duties and responsibilities of the CNA in delivering the good or service, and the validation that the program maintains the statutorily required 60% employment of employees with significant disabilities. This information allows the committee to review the complete application, match it with the need for a good or service, understand the impact to the competitive environment and determine the appropriate recommendation.

As a recommended guideline for determining the reasonableness of pricing, permissive contracts should be measured against full retail environment pricing (MSRP, etc), and mandatory contracts should be measured against competitive environment pricing (existing State competitively awarded agreement pricing, supplier quotes containing discounts and sales, etc). The state may consider tax variables in determining final costs, as many CNAs are exempt from normally applicable taxes.

The committee does not have to follow the award request of the CNA submitted in the application. Based on the review of the application, the need for the good or service, the impact on the competitive environment and existing state contracts, the committee may change the recommendation to a contract style they feel is appropriate. The committee has the ability to recommend a mandatory contract, a permissive contract, no contract, or table the application for later review and request additional information. The CNA will have an opportunity to present the proposal, provide the supporting reasons behind the request, and should be prepared to respond to the committee's questions and requests at the meeting where the proposal will be heard. If the CNA is in disagreement with the recommendation of the committee, the CNA should follow the dispute process.

Should the committee approve a proposal, SPO may draft a contract using the most current standard terms and conditions and present it to the applicant for signature. Should the applicant and SPO be unable to come to terms with a draft contract, a contract will not be awarded.

Disputes

The dispute process shall follow R2-7-1010 of the State of Arizona Administrative Code. An interested party should review this rule and submit the required components of the dispute to the committee chair in writing within 14 days of the award decision. Upon receipt of the written dispute the chair shall give written notice of the dispute to any interested party and the committee. The committee chair shall resolve the dispute via written decision within 14 days after the date the dispute was received by the chair. If the chair fails to respond the person who submits the dispute may proceed as if the chair rejected their dispute. Appeals of the chair's decision shall be made to the Director under R2-7-A905.

Marketing

If awarded a contract, the CNA has a responsibility to market the contract to public procurement units, both state agencies and political subdivisions. A contract award does not automatically equal business. The CNA must still contact agencies, publish the abilities of the organization, the goods and services covered under contract, and assist in supporting agency personnel interested in placing orders from the awarded contract. As with any good business strategy, marketing the set aside contract and certified status to public procurement entities allows them to become familiar with the abilities of the organization and endeavor to meet the established purchasing goal.

CNAs with statewide or agency specific contracts are expected to perform like any other awarded contracted vendor. Good customer service, delivery, and compliance with the terms and conditions of the contract assist the CNA and the Set-Aside Program in building credibility and acceptance within the public procurement community. In cases of complaints or concerns, the SPO staff member will assist both the public procurement units and CNAs in resolving the dispute.

Committee Members

Committee members are key to the operation of the Set-Aside Program. Expectations of committee members include:

- Attend meetings

- Review documentation

 - Certification requests

 - Feasibility reviews

 - Contract proposals

 - Price increase requests

 - Goals and performance metrics

- Actively participate

 - Represent your organization

 - Make recommendations

 - Request additional information

 - Vote

- Support the committee

 - Assist in educational or training efforts

 - Participate in subcommittees

Meetings and Decorum

Meetings must be conducted in accordance with Arizona Open Meeting Law. Members of the committee are required to review documentation provided by the Arizona Ombudsman Citizens' Aide to avoid violations. Members of the committee are considered public officers, and are also required to read the applicable chapters from the Arizona Attorney General's Agency Handbook regarding conflict of interest and appropriate conduct (see https://www.azag.gov/sites/default/files/docs/agency-handbook/2018/agency_handbook_chapter_2.pdf and https://www.azag.gov/sites/default/files/docs/agency-handbook/2018/agency_handbook_chapter_7.pdf and https://www.azag.gov/sites/default/files/docs/agency-handbook/2018/agency_handbook_chapter_8.pdf).

Conduction of business at meetings shall generally conform to Robert's Rules of Order. The Chair shall preside over the scheduling and consideration of agenda items, and may vote on any motion once a motion has been made and seconded. The Chair may, at their sole prerogative, choose to abstain or not vote on any motion under consideration. Should the Chair cast a vote on a motion, and the result of the vote on that motion is a tie, the Chair's vote shall not have any weight in breaking such a tie, and may not cast a 'second' vote breaking the tie. The result of such a scenario where a motion does not have a majority of votes cast (excluding abstentions and not voting responses) in favor (e.g. a tie) shall be that the motion fails.

When an agenda item is under consideration the Chair shall have the sole authority to recognize members or speakers prior to any motion on the item. Speakers should indicate to the Chair prior to the meeting regarding the agenda item(s) they wish to be recognized so that the Chair may adequately plan any time limitations for the efficient conduction of business on the agenda. Once recognized by the Chair, members or speakers may not yield the floor or their time to any other person, and may only yield back to the Chair. Should a Member have a question of a speaker the Chair may permit the speaker to address the question. The speaker should address the Chair or the committee in general when providing their response.

Should a member of the committee feel they have a conflict of interest on an item on the agenda the member is encouraged to disclose such a belief when the item is under consideration. The member is also cautioned to not take any action that may be perceived as participation while the item is under consideration. The member may ask the Chair to be excused from the meeting while the item is being considered, and may be brought back into the meeting once the item is no longer under consideration. Should the excusal of any member from the meeting be made, a quorum of members must still exist for the meeting to continue.

The Chair shall have the authority to schedule meetings outside of the regular quarterly meetings required by statute when they feel it is necessary to dispose of business or concerns that cannot wait for the next regular quarterly meeting. These meetings may be referred to as Special Meetings, and must follow applicable Open Meeting Law requirements. All meetings may have executive session on their agenda should requisite circumstances exist. Members of the public must leave the meeting while the committee is in executive session, and must be invited back after executive session has adjourned if the executive session is not the last item to be considered on the agenda.

SPO

The State Procurement Office is the central support agency for the Set-Aside Program. The designated staff person serves as a resource to the committee, to the vendors, the state agencies, and is the designated procurement officer for all awarded statewide set-aside contracts. This responsibility requires the individual to be not just a procurement officer, but an organizer, a compliance officer, and a secretary to the committee. This strategic position is key in operating the set-aside committee and ensuring that the Set-Aside Program conducts business in support of the purpose and goal established in the statute. The SPA, or their designee, is the chair of the committee and identifies and recommends individuals for appointment to the committee to the ADOA Director.

As the staff member to the committee, the designated procurement officer schedules the required quarterly meeting. Meetings are typically calendared at the beginning of the year for the full year, thereby securing a time and location all committee members and interested parties can commit to. The meetings must have a quorum to conduct business and the staff member must ensure prior to the meeting that a quorum will be available. If additional meetings are needed or requested, the staff member must query committee members' availability and define the method for conducting the meeting in the most transparent and efficient manner possible. This may mean meetings must be conducted telephonically or via an electronic meeting process. Either way, the agenda should indicate the meeting style so all interested parties can participate.

The staff member must coordinate the agenda to ensure the business of the committee is conducted and the program is supported and maintained. Agenda must comply with State of Arizona Open Meeting Law. The agenda contains the common items of business the committee must address, including approval of prior minutes, renewal of existing set aside contracts, feasibility applications, proposals, amendments, quarterly reports on performance metrics, reports from SPO on new solicitation opportunities, and calls to the public. The agenda must be finalized and posted to the State's public meeting website at least 24 hours prior to the meeting. If this cannot be accomplished, the meeting must be re-scheduled to meet this public meeting law requirement.

A key component of the staff member's job responsibilities is to obtain, prepare, and distribute documents to the committee members prior to the meeting. In order to provide a fair and complete review of any request, the committee must have the opportunity to review and understand the request for the upcoming meeting. Documents should be distributed at least ten (10) days prior to the meeting. Documents to be distributed will include prior meeting minutes, and applications received, any report prepared by SPO regarding renewal requests, and the update regarding the performance metrics.

In preparation for the meeting, the SPO staff member should contact all CNA providers who have contracts up for renewal prior to the following quarterly meeting to ascertain if they wish to renew the contract. Any renewal should consider potential price increases, the performance under the existing contract (agency feedback and formal complaints), and the level of expenditures. If the CNA wishes to request a price increase, this documentation must be provided by the CNA using the Amendment Form within the time frame set by the SPO staff member for final distribution to the committee members at least ten (10) days prior to the meeting date. The staff member should also be requesting the expenditures under the contract from the CNA and validating this information with the ADOA accounting office. Additionally, a request should be made from the public procurement entities for their input as well as from other SPO contract officers regarding complaints of performance under the set-aside contract. With this information the SPO staff member should be prepared to make a presentation at the committee meeting for committee consideration as to renew or not renew the

existing contract.

For contracts that have reached the five (5) year maximum limit, the staff member must contact the CNA provider and inform them of the necessity to re-apply for the contract. Re-application forms can be found on the State Procurement Office website and the staff member should provide a link to the CNA for accessing the forms. Re-applications for contracts must be completed by the CNA and submitted with a sufficient amount of time as set by the SPO staffer to distribute the application to the committee members at least ten (10) days prior to the meeting date. The staff member should obtain the same level of information for re-applications for contract that is gathered for renewals. Re-applications should include pertinent information such as expenditures under the previous contract, any complaints received, and the continuing need for the good or service should be presented to the committee at the meeting to help inform them when making a recommendation for award.

Any feasibility applications or proposals submitted to the staff member prior to the committee meeting should be reviewed for completeness and consistency with committee and state goals and objectives. Any missing information or additional information must be requested from the CNA prior to distributing the documents to the committee. If the additional information is not provided, the documents should be distributed, but a note from the staff member should indicate the missing information and if it was requested but not submitted. The staff member shall indicate on the form whether SPO would recommend the application/proposal be moved forward in its present state. When communicating with CNAs regarding feasibility applications or proposals, the staff member should clearly state the deadline for submission.

Every quarterly meeting shall include a review of qualifying Set-Aside program spend and qualifying touchable spend. Qualifying program spend shall be defined as expenditures with any CNAs and ACI for any goods or services not directly attributable to a separate program or procurement method. Touchable spend shall be defined as accounting object codes that mirror qualifying program spend accounting object codes. The results of quarterly figures shall be transmitted to the Governor, the President of the Senate, the Speaker of the House, the Director of the Department of Administration, and each committee member, enclosed in a letter signed by the Chair. At the second quarterly meeting of the fiscal year SPO staff shall compile an annual report for the immediately preceding state fiscal year's CNA and ACI activity detailing metrics including but not limited to: name and number of CNAs, and number of individuals with disabilities employed through Set-Aside program activity.

At each quarterly meeting the staff member must present a comparison between the quarter's performance and the previous fiscal year quarter's performance. SPO shall include in this performance report details of each department's expenditures and engage each department falling short of the 1% metric to devise a plan to endeavor to meet the overall 1% goal by the end of the fiscal year.

Additionally, to aid CNAs in identifying opportunities for contracts, the current list of statewide contracts should be presented. The list should note the contract, the good or service, the current expiration date, and the intent of the office to extend or re-solicit for the good or service. CNAs then have the ability to contact the current procurement officer, research the contract, and ask questions of the staff member to investigate future contracting opportunities.

In conducting the meeting, the chair utilizes Robert's Rules of Order. These procedures provide a framework of transparency and offer instructions for efficiently processing applications and conducting the business of the committee. The SPA, as the chair, uses the agenda to complete the

required reviews and committee actions. The staff member shall also present the information collected for renewals and re-applications to the committee as the item is up for discussion. The staff member in this instance is acting as the representative of the SPO before the committee. The staff person is responsible for taking minutes of the meeting, notating the actions, and recording the recommendations and requests of the committee. See "Meetings and Decorum" section for further detail.

Within three (3) days after the meeting, the staff member must post the draft minutes of the meeting in order to be in compliance with public meeting laws. These draft minutes can be in writing or audio format and shall be posted to the SPO website. If the SPA is not acting as the chair of the committee, the staff member shall ensure that all committee recommendations are forwarded to the SPA. This notification is required for the SPA to take the appropriate action in making contract awards, or in the case of agency specific contracts notifying the agency CPO.

Staff to the committee have a key educational and training responsibility. In order to support the achievement of the 1% purchasing volume goal, agencies and other public procurement units must be informed and educated on the program, its purpose, and goals. In order to do this educational and training sessions must be conducted. Standard presentations focused on the procurement of goods and services from the program and how to become a CNA should be created and maintained. This material should be reviewed annually for updates and maintained on the SPO website for reference.

A calendar of regularly scheduled training opportunities should be created. These opportunities should focus on the use of the standard presentations and be targeted for vendors, agencies, CPO meetings, public procurement industry shows, and any other requests made to the committee. By scheduling regular training sessions, vendors and agencies have the ability to learn the requirements of the program, the use of the eProcurement system to find information about and participate in the program. Training for vendors is critical to increasing the amount of vendors certified and the types of goods and services under contract. Without CNAs and knowledgeable participants the goals will never be reached.

Staff to the committee should also explore additional opportunities with committee members to identify, publicize, and market additional opportunities and contracts to help fulfill the purpose of the committee.