

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the Register 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

1. Sections Affected
R7-2-307
R7-2-808
- Rulemaking Action
Amend
Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing Statute: A.R.S. § 15-203(A)
Implementing Statute: A.R.S. §§ 15-702 and 15-705
3. The effective date of the rules:
December 22, 1997
4. A list of all previous notices appearing in the Register addressing the final rule:
Notice of Rulemaking Docket Opening: 3 A.A.R. 1663, June 13, 1997
Notice of Proposed Rulemaking: 3 A.A.R. 2016, August 1, 1997
5. The name and address of agency personnel with whom persons may communicate regarding the rule:
Name: Corinne L. Velasquez, Administrator
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057
Fax: (602) 542-3046
6. An explanation of the rule, including the agency's reason for initiating the rule:
R7-2-307 sets forth the eligibility criteria for an individual to take a GED test to obtain a High School Equivalency Diploma. Current language requires that an applicant desiring to take a GED test to not have been attending school for 6 consecutive months preceding application for testing. It is believed that this requirement is unnecessary as the Board could find no research to support that the requirement had an effect on the number of dropouts or the number of individuals taking the GED. Therefore, the Board has adopted an amendment to R7-2-307 which deletes the requirement that an applicant have been out of school for 6 consecutive months preceding application for a GED test.

R7-2-808 sets forth the requirements for pupil participation in extracurricular activities. Several years ago, the legislature required the State Board of Education to adopt rules related to home-schooled students participation in interscholastic activities. The new language related to home-schooled students was included within the language of R7-2-808 on advice of legal counsel. Since the previous amendment to R7-2-808 adding the language related to home-schooled students, there has been controversy surrounding the issue of home-schooled students and participation and, therefore, the Board adopted this amendment to R7-2-808 which would return the rule to its original state, applying only to pupil participation in extracurricular activities. The issue of home-schooled student participation is addressed as a separate rule.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
8. The summary of the economic, small business, and consumer impact:
There will be no economic or small business impact related to these 2 amendments. The adopted change to R7-2-307 will allow individuals who have left school the opportunity to apply to take a GED test approximately 6 months earlier than they would

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have been allowed to do absent this amendment. This amendment will only apply to individuals who have not received a high school diploma, who are at least 16 years of age, and who wish to take a GED test to obtain a high school equivalency certificate. The requirement for the State Board of Education to prescribe rules for policies regarding students participating in extracurricular activities has been in effect for approximately 9 years. The amendment as adopted has no effect on the current requirements for students participating in extracurricular activities, but deletes language related to home-schooled students' participation in interscholastic athletic competitions. There is no change to the language related to student participation in extracurricular activities.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
R7-2-307: In the title of the rule, change the upper case "S" in "School" to a lower case "s" to correct a typographical error.
10. **A summary of the principal comments and the agency response to them:**
The Board received written comment signed by 2 individuals, 1 of which spoke at the public hearing, representing the Adult Services Division and Juvenile Justice Services Division of the Arizona Supreme Court. The comments were in support of the proposed amendment to R7-2-307, with the individuals stating that the programs they represent are severely impacted by the requirement to wait for 6 months in order to provide GED services to their clients. Both individuals stated that many of their clients would have an enhanced change for success if they could provide services in an abbreviated format. There were no comments received, oral or written, relating to the proposed amendment to R7-2-808.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
12. **Incorporations by reference and their location in the rules:**
None.
13. **Was this rule previously adopted as an emergency rule?**
No.
14. **The full text of the rules follows:**

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

Section
R7-2-307. High School Equivalency Certificates

ARTICLE 8. COMPLIANCE

R7-2-808. Pupil Participation in Extracurricular Activities

ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

R7-2-307. High School Equivalency Certificates

- A. No change.
 1. No change.
 2. No change.
- B. No change.
 1. No change.
 2. No change.
 3. No change.
 4. No change.
 5. No change.
- C. Arizona GED Testing Centers shall administer GED tests to applicants who meet the following criteria:
 1. The applicant is at least 16 years of age, has positive identification, proof of age, ~~has not been attending school for six consecutive months preceding application for testing as verified by letter from last school attended,~~ and, if the applicant is between 16 years and 18 years of age, he or she must present a signed statement of parental consent from his or her parent or legal guardian; or
 2. The applicant is 18 years of age, has positive identification and proof of age.
 3. The applicant has not received a high school diploma or high school equivalency certificate.

4. The applicant has paid the appropriate fee not to exceed \$15 for the entire GED battery of 5 tests, or \$3 per test for each test that is retaken.

- D. No change.
 1. No change.
 2. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.
 - e. No change.
 - f. No change.
 - g. No change.
 - h. No change.
 3. No change.
 4. No change.
 5. No change.
 6. No change.
 7. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.
 - e. No change.
 - f. No change.
 - g. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.
 - iv. No change.
 - v. No change.
 - vi. No change.
 - vii. No change.
- E. No change.

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1. No change.
 2. No change.
- F. No change.
- G. No change.
1. No change.
 2. No change.
 3. No change.
 4. No change.
 5. No change.

ARTICLE 8. COMPLIANCE

R7-2-808. Pupil Participation in Extracurricular Activities

A. The following standards are effective for ~~district school~~ students in grade 6, if part of a middle school, ~~and or in grades 7 through 12, and, home school students in grades 7 through 12.~~ Subject to meeting the eligibility requirements specified in this rule and provided that all students meet the requirements of this rule and other district eligibility requirements, a district school student shall be allowed to participate in extracurricular activities and a home school student shall be allowed to participate in interscholastic athletic competition. If a student reaches the age of 15 on or before September 1 of the school year, the student shall not be eligible to participate at the 7th and 8th grade levels. If a student reaches the age of 19 or before September 1 of the school year, the student shall not be eligible to participate at the 9th through 12th grade levels.

1.B. Definitions. Extracurricular activities are:

a.1. ~~Extracurricular activities are:~~ All interscholastic activities which are of a competitive nature and involve more than 1 school where a championship, winner, or rating is determined; and all those endeavors of a continuous and ongoing nature for which no credit is earned in meeting graduation or promotional requirements and are organized, planned, and sponsored by the district consistent with district policy.

b. Activities which are an integral part of a credit class shall be excepted from the rule.

2. ~~Interscholastic Athletic Competition is:~~ All interscholastic sports activities which are of a competitive nature, involve more than 1 school where a championship, winner, or rating is determined and involve physical exercise and established game rules.

3. ~~Attendance Area means:~~ The geographic attendance areas established by the district for attendance at a school.

2.C. Eligibility Academic eligibility requirements and ineligibility.

a.1. Eligibility. To be eligible to participate in extracurricular activities and interscholastic athletic competition, a student shall be required to:

i.a. Earn a passing grade in each course or subject in which the student is enrolled; and instructed. Passing grade shall be determined on a cumulative basis, from the beginning on instruction to the recording of the final grade for the course.

ii.b. Maintain satisfactory progress toward advancement, promotion, or graduation.

b.2. Ineligibility. When it is determined that a student has failed to meet the requirements specified for eligibility, the student shall be declared ineligible to participate in extracurricular activities and shall

remain ineligible until the requirements of eligibility are met.

i. The governing board shall establish the criteria for a passing grade and satisfactory progress toward promotion or graduation, taking into account the needs of children placed in special education programs pursuant to R7-2-401 et seq. Passing grades shall be determined on a cumulative basis, from the beginning of instruction to the recording of a final grade for the course.

ii.3. Every 9 weeks or less. At least every 9 weeks, or more frequently as determined by the governing board, district personnel shall review the progress of students to determine their eligibility status. If a student is declared ineligible, the student shall remain ineligible until a subsequent check is performed the next reporting and it is determined that the student meets the eligibility requirements specified in subparagraph ~~(2)(C)-(a)(1).~~

a. ~~The governing board shall establish the criteria for a passing grade and satisfactory progress toward promotion or graduation for district students, taking into account the needs of children placed in special education programs pursuant to R7-2-401 et seq.~~

b. The individual providing the primary instruction of a home school student shall submit a notarized affidavit which provides:

i. The affidavit is being submitted under penalty of perjury;

ii. Whether the student is receiving a passing grade in each course or subject being taught;

iii. Whether the student is maintaining satisfactory progress towards advancement, promotion, or graduation;

iv. If a student has been enrolled in a district as a full time student, the student shall not be eligible to participate in interscholastic athletic competition as a home schooled student until an Affidavit of Intent to Home School has been filed with the County Superintendent and 30 days has elapsed since the filing of the affidavit.

3.D. Each governing board shall adopt a policy and implement a program pursuant to that policy to provide:

a.1. Oral or written preliminary notice to all district students and their parents or guardian of pending ineligibility;

b.2. Written notice to students and their parents or guardians when ineligibility has been determined;

c.3. Educational support services to district students declared ineligible because of this rule, as well as those notified of pending ineligibility;

4. ~~Oral or written preliminary notice to all students and their parents or guardian of the time frames related to participation in extracurricular activities and interscholastic athletic competition. Written notice shall be made available within the school's administrative office to all students and their parents or guardians.~~

5. ~~Written notice made available to all students, their parents, or guardians at the district's administrative office regarding policies related to transportation, insurance, physical condition, fees, uniforms, calendars, practice~~

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- requirements, and schedules and acceptance on a team. These policies are to be made available within the school's administrative office to all students and their parents or guardians.
6. That all policies related to interscholastic athletic competition do not impose additional requirements on home-schooled students than are imposed on district students.
- E. All students shall register and pay fees established by the district for participation in interscholastic athletic competition or extracurricular activities and meet all qualifications, responsibilities, and standards of behavior and performance, including those related to demonstration of skill and proficiency, practice requirements, physical prerequisites, and acceptance onto the team, squad, or group.
- F. District students may participate in interscholastic athletic competition and extracurricular activities in only the school in which the student is enrolled. Home school students may participate in interscholastic athletic competition at a school only if the student actually resides within the boundaries of the attendance area of a school. Home school students are not eligible for open enrollment pursuant to A.R.S. § 15-816 through §16.06

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TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R19-3-501	Amend
R19-3-502	Amend
R19-3-503	Amend
R19-3-504	Amend
R19-3-505	Amend
R19-3-506	Amend
R19-3-507	Amend
R19-3-508	Amend
R19-3-509	Amend
R19-3-510	Amend
R19-3-511	ReNUMBER
R19-3-511	New Section
R19-3-512	ReNUMBER
R19-3-512	New Section
R19-3-513	ReNUMBER
R19-3-513	Amend
R19-3-514	ReNUMBER
R19-3-514	Amend
R19-3-515	ReNUMBER
R19-3-515	Amend
R19-3-516	ReNUMBER
R19-3-516	Amend
R19-3-517	ReNUMBER
R19-3-517	Amend
R19-3-518	ReNUMBER
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R19-3-520	Amend
R19-3-521	ReNUMBER
R19-3-521	Amend
R19-3-522	ReNUMBER
R19-3-522	Amend
R19-3-523	ReNUMBER
R19-3-523	Amend
R19-3-524	ReNUMBER
R19-3-524	Amend
R19-3-525	ReNUMBER
R19-3-525	Amend
R19-3-526	ReNUMBER
R19-3-526	Amend

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R19-3-527	Renumber
R19-3-527	Amend
R19-3-528	Renumber
R19-3-528	Amend
R19-3-529	Renumber
R19-3-529	Amend
R19-3-530	Renumber
R19-3-530	Amend
R19-3-531	Renumber
R19-3-531	Amend
R19-3-532	New Section
R19-3-533	Renumber
R19-3-533	Amend
R19-3-534	New Section
R19-3-535	Renumber
R19-3-535	Amend
R19-3-536	Renumber
R19-3-536	Amend
R19-3-537	Renumber
R19-3-537	Amend
R19-3-538	Renumber
R19-3-538	Amend
R19-3-539	Renumber
R19-3-539	Amend
R19-3-540	New Section
R19-3-541	Renumber
R19-3-541	Amend
R19-3-542	Repeal
R19-3-542	Amend
R19-3-543	Repeal
R19-3-543	Renumber
R19-3-544	Repeal
R19-3-544	New Section
R19-3-545	New Section
R19-3-546	New Section
R19-3-547	Renumber
R19-3-547	Amend
R19-3-548	New Section
R19-3-549	Renumber
R19-3-549	Amend
R19-3-550	New Section
R19-3-551	Renumber
R19-3-551	Amend
R19-3-552	Renumber
R19-3-552	Amend

2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 5-504(B)

Implementing statute: A.R.S. § 5-509

3. The effective date of the rules:

December 16, 1997

4. A list of all previous notices appearing in the Register addressing the rule:

Notice of Rulemaking Docket Opening: 3 A.A.R. 1223, May 2, 1997

Notice of Proposed Rulemaking: 3 A.A.R. 1485, June 6, 1997

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mr. Geoffrey Gonsler, Executive Director

Address: Arizona State Lottery Commission
4740 East University
Phoenix, Arizona 85034

Telephone: (602) 921-4400

Fax: (602) 921-4488

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6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
R19-3-501 through R19-3-552 is required by A.R.S. § 5-504(B) and prescribes the policies and procedures for procurements relating to the design and operations of the Lottery, and the purchase of Lottery equipment, tickets, and related material. This amendment will provide consistency in the language of the text, conform the rules to a recent court decision, and make the rules clear, concise and understandable.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
8. **The summary of the economic, small business, and consumer impact:**
- A. The Arizona State Lottery.
The only change in the manner in which the Lottery currently conducts the procurement function is to replace the 2nd review for bid protests from review by the Director to review by the Office of Administrative Hearing. There are no identifiable costs to the Agency for this revision.
 - B. Political Subdivisions.
Political subdivisions of this state are not directly affected by the revision of this rule.
 - C. Businesses Directly Affected by the Rulemaking.
Businesses affected by this rule are vendors wishing to supply the Lottery with products and services through the bid process. The rule provides for competition, consistency, and equal treatment of all vendors. It prescribes the procedures that will be followed in the purchasing of Lottery products and services. The only change effecting businesses is the Small Business Set-aside requirement for purchases estimated to cost less than \$10,000. Those purchases must be awarded to businesses which are independently owned and operated and employs less than 100 employees or had gross annual receipts of less than \$4 million dollars in its last fiscal year. The Arizona Lottery awarded 3 contracts to small businesses in fiscal year 1997. The amount of the awards totalled \$4551, out of the Lottery's total procurement expense of \$1.4 million.
 - D. Private and Public Employment.
Private and public employees are not directly affected by the revision of this rule.
 - E. Consumers and the Public.
There are no costs to the public associated with the amendment of this rule.
 - F. State Revenues.
This rulemaking will not have an impact on state revenues.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
The text of Article 5, as adopted, is substantially the same as the text of the proposed rule; however, grammatical, style, format, spelling, capitalization, punctuation and typographical errors have been corrected as recommended by the Attorney General.
10. **A summary of the principal comments and the agency response to them:**
No comments were received by the agency.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
12. **Incorporation by reference and their location in the rules:**
None.
13. **Was this rule previously adopted in an emergency rule?**
No.
14. **The full text of the rules follows:**

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 5. PROCUREMENTS

R19-3-501.	Definitions	R19-3-509.	Competitive Sealed Bidding
R19-3-502.	Time and Place of Market Price	R19-3-510.	Competitive Sealed Proposals
R19-3-503.	Confidential Information	R19-3-511.	<u>Small Business Set-aside</u>
R19-3-504.	General Provisions	R19-3-512.	<u>Procurements Not Exceeding an Aggregate Amount of \$25,000</u>
R19-3-505.	Assignments of Rights and Duties	R9-3-513.	Procurements Not Exceeding an Aggregate Amount of \$10,000
R19-3-506.	Change of Name	R19-3-514.	Sole Source Procurement
R19-3-507.	Installment Purchases	R19-3-515.	Emergency Procurements
R19-3-508.	Multiple-source Contracting		

- R19-3-516. Cancellation of Invitation for Bids or Requests for Proposals
- R19-3-517. Responsibility of Bidders and Offerors
- R19-3-518. Prequalification of Contractors
- R19-3-519. Bid and Contract Security
- R19-3-520. Bid and Performance Bonds for Material or Service Contracts
- R19-3-521. Cost or Pricing Data
- R19-3-522. Types of Contracts
- R19-3-523. Approval of Accounting System
- R19-3-524. Multi-term Contracts
- R19-3-525. Right to Inspect Plant
- R19-3-526. Right to Audit Records
- R19-3-527. Reporting of Anticompetitive Practices
- R19-3-528. Anticompetitive Practices Among Bidders or Offerors
- R19-3-529. Retention of Procurement Records
- R19-3-530. Record of Procurement Actions
- R19-3-531. Content of Specifications
- R19-3-532. Types of Specifications
- R19-3-533. Confidentiality
- R19-3-534. Maximum Practicable Competition
- R19-3-535. Requirements of Nonrestrictiveness
- R19-3-536. Preparation of Specifications by Persons Other than State Personnel
- R19-3-537. Conflicts of Interest
- R19-3-538. Filing of a Protest
- R19-3-539. Time for Filing Protest
- R19-3-540. Stay of Procurement During Protest
- R19-3-541. Confidential Information
- R19-3-542. Hearing Procedures Decision by the Director Procurement Officer
- R19-3-543. Rehearing Procedures Remedies
- R19-3-544. Judicial Review Appeals of Protest Decisions to the Director
- R19-3-545. Stay of Procurement During Appeal
- R19-3-546. Dismissal Before Hearing
- R19-3-547. Commission's Rejection of Award
- R19-3-548. Contract Claims
- R19-3-549. Resolution of Contract Claims and Controversies
- R19-3-550. Appeals of Contract Claim Decisions to the Director
- R19-3-551. Debarment and Suspension of Contractors
- R19-3-552. Exclusive Remedy

ARTICLE 5. PROCUREMENTS

R19-3-501. Definitions

In this Article, unless the context otherwise requires:

1. "Best interests of the Lottery" means advantageous to the Lottery.
2. "Business" means any a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
3. "Change order" means a document signed by the Director which directs the contractor to make a changes change which that the contract authorizes the Director to order.
4. "Contract" means all types of an agreements, regardless of what they may be it is called, for the procurement of lottery equipment, tickets, and related materials.
5. "Contract modification" means any a written alteration in the terms and or conditions of any a contract accomplished by mutual action of the parties to the contract.
6. "Contractor" means any a person who has a contract with the Lottery.

7. "Cost analysis" means the evaluation of cost data.
- 7-8. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.
- 8-9. "Cost-plus-a-percentage-of-cost-contract Cost-Plus-a-Percentage-of-cost-contract" means a contract under which the parties agree, prior to before completion of the contract work, that the fee is a predetermined percentage of the total cost of the work.
- 9-10. "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which that are reasonable, allowable, and allocable in accordance with the contract terms and the provisions of this Article, and a fee, if provided for in the contract.
- 10-11. "Days" means calendar days and shall be is computed pursuant to under A.R.S. § 1-243.
- 11-12. "Director" means the Executive Director of the State Lottery.
- 12-13. "Discussions" means an exchange of information or any form of negotiation: oral or written negotiation between the Lottery and an offeror during which information is exchanged about specifications, scope of work, terms and conditions and price included in an initial proposal. Communication with an offeror for the sole purpose of clarification does not constitute "discussions."
- 13-14. "Filed" means delivery delivered to the office of the Director. A time/date stamp affixed to a document by the office of the Director shall be when the document is delivered determinative of determines the time of delivery for purposes of filing.
- 14-15. "Incremental award" means an award a grant of portions of a definite quantity requirement to more than 1 contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
- 15-16. "Interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract.
- 16-17. "Invitation for Bids bids" means all documents, whether attached or incorporated by reference, which that are used for soliciting to solicit bids in accordance with the procedures prescribed in R19-3-509.
- 17-18. "Materials" means all lottery property including equipment, supplies, printing, insurance, and leases of property but does not include land or a permanent interest in land or real property.
18. "May" denotes the permissive.
19. "Minor informality" means mistakes, excluding a judgmental error, that has negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
- 19-20. "Multiple award" means an award a grant of an indefinite quantity contract for 1 or more similar materials or services to more than 1 bidder or offeror.
- 20-21. "Multi-step sealed bidding" means a two 2-phase bidding process consisting of a technical first phase composed of 1 or more steps in which bidders submit unpriced technical offers to be evaluated by the Director and a 2nd phase in which those bidders whose technical

- ~~offers are determined to be acceptable during the first phase have their price bids considered and a price phase.~~
- ~~21-22.~~ "Person" means any corporation, business, individual, union, committee, club, other organization, or group of individuals.
- ~~22-23.~~ "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any lottery materials or services. Procurement also includes consists of all functions that pertain to the obtaining of any lottery material, or services, including description or requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- ~~23-24.~~ "Proprietary specification" means a specification ~~state-~~ ment that describes a material made and marketed by a person having the exclusive right to manufacture and sell the material and excludes other material with similar quality, performance, or functional characteristics.
- ~~24-25.~~ "Purchase description" means the words used in a solicitation to describe the lottery materials for to be ~~purchase~~ procured and includes specifications attached to, or made a part of, the solicitation.
- ~~25-26.~~ "Purchase request" or "purchase requisition" means that a document, or electronic transmission, whereby in ~~which~~ the Director requests that a contract be entered into for a specific need and may include the a description of the a requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information supplied for the making of any needed to make a written determination required by this Article.
- ~~26-27.~~ "Request for Proposals proposals" means all documents, whether attached or incorporated by reference, which that are used for ~~soliciting to solicit~~ proposals in accordance with ~~procedures prescribed in R19-3-510.~~
- ~~27-28.~~ "Responsible bidder or offeror" means a person who has the capability to perform the contract requirements and the integrity and reliability necessary to ensure a good faith performance.
- ~~28-29.~~ "Responsive bidder or offeror" means a person who submits a bid which that conforms in all material respects to the invitation for bids or request for proposals.
- ~~29-30.~~ "Services" means the furnishing of labor, time, or effort furnished by a contractor which does not involve the delivery of with no exception that a specific end product other than required reports and performance will be delivered. Services does not include employment agreements or collective bargaining agreements.
30. "Shall" denotes the imperative.
31. "Small business" means a concern, including its affiliates, that is independently owned and operated, is not dominant in its field, and employs fewer than 100 full-time employees or that had gross annual receipts of less than \$4 million dollars in its last fiscal year."
- ~~31-32.~~ "Solicitation" means an invitation for bids, a request for proposals, a request for quotations, or any other document by which the Director invites bids or proposals.
- ~~32-33.~~ "Specification" means any a description of the physical or functional characteristics, or of the nature of a lottery material or service. Specification includes a description of any requirement for inspecting, testing, or preparing a lottery material for delivery.
34. "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 the Lottery.

~~33-35.~~ "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.

36. "Trade secret" means a confidential, commercially valuable plan, formula, process or device that is used to make, prepare, compound or process trade commodities and that is a product of either innovation or substantial effort.

R19-3-502. Time and Place of Market Price

If a the price of a good at the times a time or places place described in this Article is not readily available, the price prevailing within any reasonable time before or after the time described or at any other place which that in commercial judgment or under usage of trade would serve as a reasonable substitute for the 1 described may be used, making any proper allowance for the cost of transporting the goods good to or from the other place.

R19-3-503. Confidential Information

A. If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld from the public, a statement advising the person shall advise the Director of this fact and precisely in a written statement that includes why it the information should be withheld shall accompany the submission and the information shall be so identified wherever it appears.

B. ~~The information identified by the person as confidential shall not be disclosed until the Director makes a written determination.~~

~~C.B.~~ The Director shall review the statement and information and shall determine in writing issue a written decision whether the information shall will be withheld.

~~D.C.~~ If the Director determines to disclose the information, the Director shall inform the bidder in writing of the determination provide a copy of the written decision to the person that requested the information be withheld.

R19-3-504. General Provisions

A. A person who that participates in any aspect of a specific procurement as an advisor to the Lottery shall be prohibited from receiving not receive any direct or indirect benefits directly or indirectly from a contract for the procurement.

B. Payment for any materials or services The Director shall not be made pay for any material or service unless fully approved.

C. With respect to any method of source selection, the The Director shall use, insofar as is practicable and in the best interests of the Lottery, the source selection procedures established by the Arizona Department of Administration State Procurement Office for use in similar source selection methods when selecting a source selection for a procurement.

R19-3-505. Assignment of Rights and Duties

The rights and duties of a A Lottery contractor shall not be transferred transfer or otherwise assigned assign its rights and duties without the written consent of the Director.

R19-3-506. Change of Name

If a contractor requests wishes to change the name in which it holds a Lottery contract, the contractor shall advise the Director in a written statement. The Director shall, upon receipt of a document indicating name change, enter into a written agreement with the contractor to change in the changed name. The agreement shall provide, providing that no other terms and conditions of the contract are changed.

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R19-3-507. Installment Purchases

An installment purchase may be used if advantageous to the Lottery. If an installment purchase is to be used, the Lottery shall include a provisions provision for installment purchase payments shall be included in the solicitation document.

R19-3-508. Multiple-source Contracting

- A. ~~Incremental award. The Lottery shall make An an incremental award shall be made only~~ if the Director determines in writing that the award is necessary to obtain the required quantity or delivery.
- B. ~~Multiple award. The Lottery shall make A a multiple award shall be made only~~ if the Director determines in writing that a single award is not advantageous to the Lottery. A multiple award shall be limited to the least number of contractors necessary to meet the requirements of the Lottery.

R19-3-509. Competitive Sealed Bidding

- A. ~~An Invitation for Bids shall be issued and The Lottery shall include a purchase description and all contractual terms and conditions applicable to the a procurement in any invitation for bids issued.~~
- B. In accordance with this Article, the Lottery shall give Public public notice of the an Invitation for Bids invitation for bids shall be given before the date set forth in the Invitation invitation for the opening of bids in accordance with this Article. The notice shall include publication be published 1 or more times in a newspaper of general circulation before bid opening. If the Invitation for Bids invitation for bids is for the procurement of services, the notice shall include publication be published twice in a newspaper within this state for 2 publications not less than 6 or more than 10 days apart. The 2nd publication of the notice shall be not less than 6 nor more than 10 days after the 1st publication and not less than 2 weeks before bid opening.
- C. ~~The Lottery shall open Bids bids shall be opened publicly at the time and place designated in the Invitation for Bids invitation for bids. The name of each bidder, the amount of each bid, and other relevant information as may be specified by in this Article, together with the name of each bidder shall be recorded and placed in the contract file. This record shall be open to public inspection at the bid opening in a manner prescribed by this Article. The bids shall not be open for public inspection until after a contract is awarded. To the extent the bidder designates and the Director concurs, trade secrets or other proprietary data contained in the bid documents shall remain confidential in accordance with this Article.~~
- D. ~~The Lottery Bids shall be unconditionally accepted accept without alteration or correction, except as authorized in this Article. Bids shall be evaluated based only on the criteria and requirements set forth in the Invitation for Bids; invitation for bids as prescribed in this Article. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria shall be used in bid evaluations that are not set forth in the Invitation for Bids.~~
- E. The Director may permit a bidder Requests to correct or withdraw an erroneous bids bid before or after bid opening, based on bid mistakes, may be permitted in accordance with the determination of the Director as to its validity if the Director determines that the bidder made a bid mistake. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interest of the Lottery or fair competition shall not be permitted. Except as otherwise provided in by this Article, the Director shall support all decisions a decision to permit the correction or withdrawal of

~~bids a bid, or to cancel awards an award or contracts contract based on a bid mistakes mistake, shall be supported by a written determination of the Director.~~

- F. ~~The Lottery shall award a 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 invitation for bids. The amount of any an applicable transaction privilege or use tax of a political subdivision of this state shall not be a factor in determining the lowest responsible and responsive bidder if a competing bidder located outside of this state is not subject to a transaction privilege or use tax of a political subdivision of this state.~~
- G. ~~The A multi-step sealed bidding method may be used if the Director determines in writing that it is not practical to initially prepare a definitive purchase description initially which that is suitable to permit an award based on competitive sealed bidding. The multi-step sealed bidding method involves issuing An an Invitation for Bids invitation for bids may be issued requesting the submission of technical offers to be followed by an a 2nd Invitation for Bids invitation for bids requesting the submission of price offer. The 2nd invitation for bids shall be limited to those bidders whose technical offers are determined to be technically acceptable under the criteria set forth in the 1st solicitation invitation for bids, except that the multi-step sealed bidding method may not be used for construction contracts.~~
- H. If the price of a recycled paper product which conforms to specifications is within 5% of a low bid product which 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.

R19-3-510. Competitive Sealed Proposals

- A. ~~If, under this Article, the Director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Lottery, a contract the Lottery may be entered into enter into a contract by competitive sealed proposals.~~
- B. The Lottery shall solicit competitive sealed Proposals proposals shall be solicited through a Request for Proposals request for proposals.
- C. The Lottery shall give Public public notice of the Request for Proposals request for proposals shall be given in the same manner as provided in R19-3-509(b).
- D. The Lottery shall open Proposals proposals shall be opened publicly at the time and place designated in the Request for Proposals request for proposals. The name of each offeror and such other relevant information as is specified by in this Article shall be publicly read and recorded in accordance with this Article the contract file. All information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of evaluation and contract negotiation. The proposals shall be open for public inspection after contract award. To the extent the a bidder designates and the director concurs, a trade secrets secret or other proprietary data contained in the bid documents shall remain confidential in accordance with this Article.
- E. The Lottery Request for Proposals shall include in a request for proposals information regarding state the relative importance of price and other evaluation factors. specific numerical weighing is not required.
- F. As provided in the The Lottery may specify in a Request for Proposals request for proposals, and under this Article, that discussions may be conducted with responsible offerors who

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submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure ~~ensure~~ full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, ~~and such revisions~~ Revisions of proposals may be permitted after submission and before award for the purpose of obtaining best and final offers. ~~In conducting discussions, there~~ The Lottery shall be no disclosure of not disclose any information derived from proposals submitted by competing offerors ~~in conducting discussions~~.

- G. ~~The Lottery shall award shall be made a contract~~ to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Lottery taking into consideration the evaluation factors ~~set forth in the Request for Proposals request for proposals~~. ~~No The Lottery shall not use other factors or criteria may be used in the evaluation~~. The amount of ~~any an~~ applicable transaction privilege or use tax of a political subdivision of this state shall not be a factor in determining the most advantageous proposal if a competing offeror located outside this state is not subject to a transaction privilege or use tax of a political subdivision of this state. ~~The contract file shall contain the basis on which the award is made~~ written determination that a proposal is the most advantageous to the Lottery shall be retained in the contract file.

R19-3-511. Small Business Set-aside

- A. When practical and as except as provided under subsection (D) of this rule, purchases estimated to cost less than \$10,000 shall be restricted to small businesses in accordance with procedures set forth in subsections (B) and (C). Purchases shall be conducted in accordance with R19-3-512.
- B. If a request for quotations is issued for the purchase, it shall contain a notice that only small businesses as defined in these rules may respond. Any request for quotations that requires written quotes shall request bidders to self-certify in their quotes that they are a small business. If verbal quotes are accepted in response to a written request for quotations or if the bidder fails to certify in a written quote that it is a small business, the Lottery shall confirm before awarding a contract that the intended awardee is a small business. A bidder shall be presumed to be small business if it has registered on the State Procurement Office's prospective vendors list as a small business. The Lottery shall make a written notation in the contract file of that confirmation.
- C. If a request for quotations is not issued, the Lottery shall verbally request confirmation that the bidder contacted to offer a quote is a small business. The Lottery shall confirm before awarding a contract for a purchase that the intended awardee is a small business and shall make a written notation in the contract file of that confirmation.
- D. The Lottery shall not determine a bidder's status as a small business under any of the following circumstances:
1. Sole source procurements as define in §41-2536;
 2. Emergency procurements as defined in §41-2537;
 3. Purchases not expected to exceed \$1000;
 4. Purchases that have been unsuccessfully completed under subsections (B) and (C) of this rule, including failure to obtain fair and reasonable prices.

R19-3-512. Procurements Not Exceeding an Aggregate Amount of \$25,000

- A. The Lottery shall make purchases estimated to cost from \$10,000 to \$25,000 in accordance with the following procedures:

1. Conduct purchases in accordance with procedures prescribed in R19-3-509 and R19-3-510.
2. The Lottery may use the State Procurement Office's electronic notification/distribution system, AZFACTS, in accordance with the following procedures:
 - a. Issue a request for quotations. The request for quotations shall be transmitted to the state procurement office's electronic/distribution system, AZFACTS.
 - b. Retain requests for quotations on the electronic notification/distribution system for at least 11 days.
 - c. Accept quotes from bidders on a form approved by the state procurement administrator and record and place the quotes in the procurement file.
 - d. Make the award to the responsible bidder submitting the quotation that is most advantageous to the Lottery and conforms to the solicitation.
 - e. If only 1 responsive quotation is received, include a statement in the contract file regarding the basis on which it was determined that the price is fair and reasonable. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases or current price lists.
- B. The Lottery may place purchases estimated to cost less than \$10,000 on the electronic notification/distribution system, AZFACTS, if the procedures in subsection (A)(2) are followed.
- C. The Lottery may make purchases estimated to cost from \$5,001 to \$9,999 in accordance with the following procedures:
 1. If applicable under R19-3-511, accept bids from small businesses only.
 2. Solicit written quotations from at least 3 bidders.
 3. Solicit a quotation from any vendor who specifically requests to submit a quotation. The Lottery shall rotate the vendors solicited to the extent necessary to give all vendors a fair and equal opportunity to compete.
 4. Issue the request for quotations for a reasonable time as determined under the circumstances of each case.
 5. Accept quotes submitted in accordance with subsection (A)(2)(c).
 6. Make the award in accordance with subsection (A)(2)(d) and, if applicable, subsection (A)(2)(e).
- D. The Lottery may make purchases estimated to cost from \$1,001 to \$5,000 in accordance with the following procedures:
 1. If applicable under R19-3-511, accept bids from small businesses only.
 2. Solicit verbal or written quotations from at least 3 bidders.
 3. Solicit a quotation from any vendor who specifically requests to submit a quotation. The Lottery shall rotate the vendors solicited to the extent necessary to give all vendors a fair and equal opportunity to compete.
 4. Record quotations and place in the procurement file a record sufficient to facilitate auditing of the purchasing process.
- E. For purchases of \$1,000 or less, the Lottery shall use procedures that provide adequate and reasonable competition and make records that facilitate auditing the purchasing process.
- F. To determine whether a multi-term contract is subject to this Section, the Lottery shall consider the total amount of the contract over the full term, including the amounts of any options to extend.

R19-3-511-R19-3-513. Procurements Not Exceeding an Aggregate Amount of \$10,000

~~Any~~ If a procurement which that does not exceed an aggregate dollar amount of \$10,000 is made with as much competition as is practicable under the circumstances, the Lottery shall be exempt the procurement from the provisions of rules R19-3-509 and R19-3-510, except that the procurement shall be made with as much competition as is practicable under the circumstances. Procurement requirements The Lottery shall not be artificially divided divide or fragmented fragment as procurement requirements to constitute a purchase under this rule and or to circumvent the source selection procedures required by R19-3-509 and R19-3-510.

R19-3-512-R19-3-514. Sole Source Procurement

If the Director determines in writing that there is only 1 source for a required material or service item, the Lottery may award without competition A a contract of any dollar amount for a procurement relating to the design and operation of the Lottery or the purchase of Lottery equipment, tickets, and related material may be awarded for a material or service without competition if the Director determines in writing that there is only 1 source for the required material, service or construction item. The Lottery shall avoid Sole sole source procurement shall be avoided except when no reasonable alternative sources source exist exists. The Director shall prepare A a written determination statement of the basis for the sole source procurement shall in included determination and place the statement in the contract file.

R19-3-513-R19-3-515. Emergency Procurements

Notwithstanding any other provisions of this Article, the Director shall authorize an emergency procurements procurement if there exists a threat to public health, welfare, or safety or if a situation exists which that makes compliance with R19-3-509 or R19-3-510 impracticable, unnecessary, or contrary to the public interest, as defined in these rules and regulations, except that The Lottery shall make an emergency procurements procurement shall be made with such as much competition as is practicable under the circumstances. The Director shall prepare A a written determination statement of the basis for the emergency determination and for the selection of the particular contractor shall be included and place the statement in the contract file.

R19-3-514-R19-3-516. Cancellation of Invitation for Bids or Requests for Proposals

The Lottery shall cancel or reject An Invitation for Bids an invitation for bids, a Request for Proposals request for proposals, or other solicitation shall be canceled or rejected if it is in the best interests of the Lottery. A written statement of The the reason for the cancellation or rejection shall be made part of placed in the contract file.

R19-3-515-R19-3-517. Responsibility of Bidders and Offerors

A. In accordance with this Article, the The Director shall determine that a bidder or offeror is responsible before awarding a contract to that bidder or offeror. If the Director determines that a prospective contractor is nonresponsible, the determination Director shall be in writing, set forth prepare a written statement of the basis for the determination, and be made a part of place the statement in the procurement file. A copy of the statement shall be promptly sent to the nonresponsible bidder or offeror. The unreasonable failure of a bidder or offeror to promptly supply promptly information in connection with an inquiry with respect to requested regarding responsibility shall be grounds for a determination of nonresponsibility with respect to the bidder or offeror. A

bidder or offeror shall not construe A finding a determination of nonresponsibility shall not be construed as a violation of the bidder's or offeror's rights of any person.

B. Factors to be The Director shall considered consider the following factors in determining if a prospective contractor whether a bidder or offeror is responsible include:

1. The proposed contractor's bidder's or offeror's financial, physical, personnel, and other resources, including subcontracts;
2. The proposed contractor's bidder's or offeror's record of performance and integrity;
3. Whether the proposed contractor is qualified legally The bidder's or offeror's legal qualifications to contract with the Lottery; and
4. Whether the proposed contractor supplied all necessary The bidder's or offeror's responsiveness to requests for information concerning its responsibility; and

~~C.5.~~ Any The bidder's or offeror's compliance with specific responsibility criteria shall be set forth in the solicitation.

~~D.C.~~ The Director shall not disclose information information furnished by a bidder or offeror pursuant to under this rule shall not be disclosed outside of the office of the Director Section without prior written consent by the bidder or offeror except to law enforcement agencies.

R19-3-516-R19-3-518. Prequalification of Contractors

A. A Prospective prospective contractors shall provide information which enables the Director to prequalify the contractors may be prequalified for particular types of materials, or services offered. Prospective A prequalified contractors contractor have a continuing duty to shall provide the Director with information annually on any material change affecting the basis of prequalification. The Lottery shall include prequalified contractors on Solicitation solicitation mailing lists of potential contractors shall include the prequalified contractors.

B. A prospective contractor need not be prequalified to be awarded a contract. Prequalification does not represent a determination of responsibility.

R19-3-517-R19-3-519. Bid and Contract Security

The Director is authorized to may require, in accordance with this Article, the that a prospective contractor submission of submit security to guarantee faithful bid and contract performance. In To determining determine 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 the Lottery. The Lottery shall include the security requirement for security shall be stated in the Invitation for Bid invitation for bid or Request for Proposals request for proposals.

R19-3-518-R19-3-520. Bid and Performance Bonds for Material or Service Contracts

A. If the Director deems it advisable to protect the interests of the Lottery, the director shall require Bid bid and performance bonds or other security shall be required for material or service contracts as the Director deems advisable to protect the interests of the Lottery. Bond or other security requirements shall be stated in the solicitation. The Lottery shall not use Bid bid or performance bonds shall not be used as a substitute for a determination of bidder or offeror responsibility.

B. If a bid is withdrawn at any time before bid opening, the Lottery shall return any bid security shall be returned to the bidder or offeror.

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R19-3-519-R19-3-521. Cost or Pricing Data

- A. The Director shall require the submission of a bidder or offeror to submit current cost or pricing data in connection with an award in situations in which the regarding a potential contract award if an analysis of the proposed price is essential to determine that the price is reasonable and fair. A contractor bidder or offeror shall, except as provided in subsection (C), submit current cost or pricing data and certify that, to the best of the contractor's bidder's or offeror'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 a contract awarded by competitive sealed proposals or pursuant to under sole source procurement authority, if the total contract price is expected to exceed an amount established by this Article; or
 2. The pricing of any a change order or contract modification which that is expected to exceed an amount established by this Article.
- B. Any A contract, change order, or contract modification under for which a certificate is certification of cost or pricing data is required shall contain a provision that the price to the Lottery shall be adjusted to exclude any significant amounts by which the Lottery finds that the price was is increased because the contractor-furnished cost or pricing data was were inaccurate, incomplete, or not current as of the date agreed on between the parties. This adjustment by the The Lottery may include profit or fee in this adjustment.
- C. The requirements of this rule Section need not be applied to contracts if any of the following apply:
1. The contract price is based on adequate price competition;
 2. The contract price is based on established catalogue prices or market prices;
 3. The Contract contract prices price are is set by law or rule; or
 4. It is The Director determined determines in writing that it is in the best interests of the Lottery to waive the requirements of this rule Section should be waived in the best interests of the Lottery and states in writing the reasons reason for the waiver are stated in writing.
- D. The Lottery shall execute A a change order exceeding five 5% of the contract amount or ten thousand dollars \$10,000, whichever is greater, shall be executed only after if the Director determines in writing that the change order is advantageous to in the best interests if the Lottery.

R19-3-520-R19-3-522. Types of Contracts

- A. Except as provided in subsections (B) and (C), The the Lottery may use any type of contract that promotes the best interests of the Lottery.
- B. The Lottery shall not use of a cost-plus-a-percentage-of-cost contract is prohibited.
- C. The Lottery shall use A a cost-reimbursement contract may be used only if the Director makes a written determination is made in writing by the Director that the this type of contract is to be less the least costly to the Lottery than any other type.

R19-3-521-R19-3-523. Approval of Accounting System

The Lottery shall not use any contract type Except except with respect to a firm fixed-price contracts, no contract type may be used contract unless it is determined in writing by the Director the Director makes a written determination that the proposed contractor's accounting system is adequate to allocate costs.

R19-3-522-R19-3-524. Multi-term Contracts

- A. Unless otherwise provided by law, the Lottery may enter a contract for materials or services may be entered into for a period of time up to as many as five 5 years, as deemed by the Director to be in the best interest interests of the Lottery, 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 1st fiscal period at the time of contracting. The Lottery may enter A a contract may be entered into for a period of time exceeding five 5 years if the Director determines that:
1. Estimated requirements for the material or service cover the period of the contract and are reasonable and continuing; and
 2. The contract will serve the best interests of the Lottery by encouraging effective competition or otherwise promoting economies in Lottery procurement.
- B. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.
- C. B. If monies are not available to support continuation of payment and performance obligations in a subsequent fiscal period, the Lottery shall cancel the contract shall be canceled and the contractor only reimbursed reimburse the contractor for only the reasonable value of any nonrecurring costs incurred but that are not amortized in the price of the materials or services delivered under the contract or which that are not otherwise not recoverable.

R19-3-523-R19-3-525. Right to Inspect Plant

A contractor and any subcontractor shall make available for inspection by The the Lottery shall, at reasonable times, inspect the any part of the contractor's or subcontractor's plant or place of business of a contractor or any subcontractor which that is related to the performance of any contract awarded or to be awarded by the Director, if deemed in the best interest of the Lottery.

R19-3-524-R19-3-526. Right to Audit Records

A person who submits cost or pricing data as provided in R19-3-521 shall make available to The the Lottery shall be entitled for audit, at reasonable times and places, to audit the books and records of any person who submits cost or pricing data as provided in R19-3-519 to the extent that the books and records that relate to the cost or pricing data performance of a contract or subcontract. Books and records shall be maintained by the contractor for 5 years from the date of final payment under the prime contract and by the subcontractor for 3 years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Director.

R19-3-525-R19-3-527. Reporting of Anticompetitive Practices

If for any reason A person who suspects collusion or other anticompetitive practices practice by any a bidders bidder or offerors offeror are suspected, a shall transmit notice of the relevant facts shall be transmitted to the Director and the Attorney General. A law enforcement agency conducting an investigation into these an anticompetitive practices practice is not required to notify to the Director.

R19-3-526-R19-3-528. Anticompetitive Practices among Bidders or Offerors

A bidder or offeror shall certify that the submission of the bid or offer submitted did does not involve collusion or other anticompetitive practices practice.

R19-3-527-R19-3-529. Retention of Procurement Records

The Lottery shall retain and dispose of All all procurement records

shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Library, Archives, and Public Records.

R19-3-528, R19-3-530, Record of Procurement Actions

The Director shall maintain a record listing of all contracts in excess of ten thousand dollars \$10,000 made under R19-3-514 R19-3-512 or R19-3-515 R19-3-513 for a minimum of five 5 years. The record shall contain:

1. Each contractor's name;
2. The amount and type of each contract; and
3. A listing of the materials or services procured under each contract.

R19-3-529, R19-3-531, Content of Specifications

- A. A specification may provide alternate alternative description descriptions of materials, material or services, or construction service items where if 2 or more design, functional, or performance criteria will satisfactorily meet the Lottery's requirements.
- B. To the extent practicable, a specification the Lottery shall not include any solicitation or contract term or condition in a specification.
- C. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Lottery's needs and shall not be unduly restrictive.
- D. To the extent practicable, specifications The Lottery shall emphasize functional or performance criteria in a specification. To facilitate the use of these criteria, the Lottery shall use reasonable efforts to include the principal functional or performance requirements as a part of its purchase requisitions.

R19-3-532, Types of Specifications

- A. To the extent practicable, the Lottery shall prepare and use a specification for a common or general use item if:
 1. A material or service item is used repeatedly, the characteristics of the material or service item, as commercially produced or provided, remain relatively stable, and the frequency or volume of procurement is significant;
 2. The Lottery's recurring needs require uniquely designed or specially produced items; or
 3. The Lottery finds it to be in the best interests of the Lottery.
- B. The Lottery may use a brand name or equal specification if the Director determines in writing that use of a brand name or equal specification is in the best interests of the Lottery and that:
 1. No specification for a common or general use item or qualified products list is available;
 2. Time does not permit the preparation of a form of specification other than a brand name specification; or
 3. The nature of the product or the Lottery's requirements make use of a brand name or equal specification suitable for the procurement.
- C. In any brand name or equal specification, the Lottery shall designate as many different brands as are practicable as "or equal" references. The Lottery shall explain in each solicitation that uses a brand name or equal specification that use of a brand name is to describe 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.

R19-3-530, R19-3-533, Confidentiality

- A. The Lottery shall make available for public inspection every Specification specification, and any written determination or other document generated or used in the development of a to develop the specification, shall be available for public inspection, except to the extent that the unless withholding of this information is permitted by law and or required as determined by the Director.
- B. If the supplier believes that the specifications contains trade secrets, test data, or similar information that should be kept confidential, a statement advising the Director of this fact shall accompany the specification.

R19-3-534, Maximum Practicable Competition

All specifications shall:

1. Seek to promote overall economy for the purpose intended;
2. Encourage competition in satisfying the Lottery's needs; and
3. Not be unduly restrictive.

R19-3-531, R19-3-535, Requirements of Nonrestrictiveness

- A. Nonexclusive specifications
 1. To the extent practicable and unless otherwise permitted by this Article, the Lottery shall describe its requirements in a all specifications specification shall describe the Lottery's requirements in a manner that does not unnecessarily exclude a material or service.
 2. The Lottery shall not use Proprietary proprietary specifications shall not be used unless the Director determines in writing that the specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the a material's performance, traditional purchasing practices, or and inconvenience of drawing specifications does not justify the use of a proprietary specifications specification.
- B. To the extent practicable, the The Lottery shall use accepted commercial specifications and procure standard commercial materials.

R19-3-532, R19-3-536, Preparation of Specifications by Persons Other than State Personnel

The Director may enter into a contract to have a specification or plan for a Lottery contract prepared by a person other than state personnel. The contract shall provide that the requirements of R19-3-529 this Article apply to all specifications or plans prepared by persons other than state personnel. Contracts for the preparation of specifications by persons other than state personnel shall require the specification writer to adhere to the requirements.

R19-3-533, R19-3-537, Conflicts of Interest

- A. No A person preparing or assisting in the preparation of a specification, plan or scope of work pursuant to R19-3-529 shall not receive any direct or indirect benefit from the utilization use of the specifications, plan or scope of work.
- B. The Director is authorized to contract for the preparation of specifications with persons other than state personnel.
- C. Notwithstanding the provisions of this rule, the The Director is authorized to shall approve or disapprove all specifications.

R19-3-534, R19-3-538, Filing of a Protest

- A. Any An interested party may protest a solicitation issued by the Lottery, or the a proposed award, or the award of a contract.

- B. The A protest shall be in writing and include the following information:
1. The name, address, and telephone number of the protester;
 2. The signature of the protester or its representative;
 3. Identification of the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
 5. The form of relief requested.

R19-3-535, R19-3-539. Time for Filing Protest

- A. Protests concerning improprieties in a solicitation.
1. A person who protests ~~protests~~ based upon an alleged improprieties ~~impropriety~~ in a solicitation that are ~~is~~ apparent before the bid opening shall ~~be filed~~ file the protest before bid opening. A person who protests ~~protests~~ based upon an alleged improprieties ~~impropriety~~ in a solicitation that are ~~is~~ apparent before the closing date for receipt of initial proposals shall ~~be filed~~ file the protest before the closing date for receipt of initial proposals.
 2. A person who in procurements requesting proposals, protests concerning an alleged improprieties ~~impropriety~~ in a request for proposals regarding a procurement that ~~do~~ does not exist in the initial solicitation but that are ~~is~~ subsequently incorporated into the solicitation shall ~~be filed~~ file the protest by the next closing date for receipt of proposals following the incorporation.
 3. If a protest is filed before the award of a contract, the award may be made before a decision on the protest.
- B. In cases other than those A person whose protest is not covered in subsection (A), protests shall be file the protest within ten 10 days after the award is made person knows or should have known the basis of the protest, whichever is earlier.
- C. In the event When a protest is filed, the Director Procurement Officer shall immediately give written notice of the protest to the successful contractor if an award has been made or to all interested parties if no award has been made.

R19-3-540. Stay of Procurement During Protest

If a protest is filed before an award of a contract or before performance of a contract has begun, the award may be made or contract performance may proceed, unless the Procurement Officer stays the contract award or performance after making a written determination that there is a probability the protest will be sustained or a stay is not contrary to the best interests of the Lottery.

R19-3-536, R19-3-541. Confidential Information

If the a protester believes the a protest contains material that should be withheld, a statement advising from the public, the protestor shall advise the Director Procurement Officer of this fact shall accompany in a statement submitted with the protest submission.

R19-3-542. Hearing Procedures

- A. The Director may arrange for a hearing of protests and notify the parties in writing of the time and place of the hearing.
- B. The hearing shall be conducted by a hearing officer in an informal manner without formal rules of evidence or procedure.
- C. The hearing officer may:
 1. Hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;

2. Require parties to state their positions concerning the various issues in the proceeding;
 3. Require parties to produce for examination those relevant witnesses and documents under their control;
 4. Rule on motions and other procedural items on matters pending before such officer;
 5. Regulate the course of the hearing and conduct of participants;
 6. Establish time limits for submission of motions or memoranda;
 7. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
 - a. Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - b. Excluding all testimony of an unresponsive or evasive witness; and
 - c. Expelling person from further participation in the hearing.
 8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
 9. Administer oaths or affirmations.
- D. A transcribed record of the hearing shall be made available at cost to any requesting party.
- E. The hearing officer shall make a recommendation to the Director based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.
- F. The Director shall affirm, modify, or reject the Committee's recommendation in whole or in part, remand the matter to the Committee with instructions, or make any other appropriate disposition.
- G. The Director's decision shall be sent to all parties by a method that provides evidence of receipt. The decision shall state that any party adversely affected may within ten days request a rehearing with the Director.

R19-3-537, R19-3-542. Decision by the Director Procurement Officer

- A. The Director Procurement Officer shall issue a written decision within ~~60~~ 14 days after a protest has been ~~is~~ filed. The decision shall contain an explanation of the factual and legal basis of the decision.
- B. The Director Procurement Officer shall furnish a copy of the decision to the protester by any method that provides evidence of receipt.
- C. The time limit for decisions set forth in under subsection (A) may be extended by the Director Procurement Officer for good cause for a reasonable time not to exceed 30 days. The Director Procurement Officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- D. If the Director Procurement Officer fails to issue a decision within the time limits set forth in subsection (A) or (C), the protester may proceed as if the Director Procurement Officer had issued an adverse decision.

R19-3-543. Rehearing Procedures

- A. Any party who is aggrieved by a decision of the Director concerning a contract claim or controversy may file a written request for rehearing of the decision specifying the precise factual and legal grounds.

Notices of Final Rulemaking

1. ~~The request for rehearing shall be filed with the Director within ten days of the decision and shall include any supporting affidavits.~~
 2. ~~The request shall be clearly designated as a "Request for Rehearing."~~
 3. ~~The Director shall, within five days after the request is filed, notify interested parties of the request by a method that provides evidence of receipt.~~
- ~~B. An interested party may within five days after receipt of the notice file a response including opposing affidavits.~~
- ~~C. Any argument not raised in the request or in a response is waived.~~
- ~~D. The Director may require the filing of written briefs and provide for oral argument.~~
- ~~E. A rehearing of the decision may be granted for any of the following causes:~~
1. ~~Irregularity in the proceedings before the Director or an abuse of discretion by the Director, depriving the requesting party of a fair hearing;~~
 2. ~~Misconduct of the Director, the staff, the hearing officer, or any party;~~
 3. ~~Accident or surprise that could not have been prevented by ordinary prudence;~~
 4. ~~Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;~~
 5. ~~Excessive or insufficient penalties;~~
 6. ~~Error in the admission or rejection of evidence or other error in law occurring at the hearing; or~~
 7. ~~A showing that the decision is not justified by the evidence or is contrary to law.~~
- ~~F. The Director's decision concerning a request for rehearing shall be in writing and state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted and its date, time, and place. The rehearing shall cover only those matters specified in the decision.~~
- ~~G. The Director, within the time for filing a request for rehearing under this rule, may order a rehearing of the decision without receiving a request for rehearing from a party.~~

R19-3-538.R19-3-543. Remedies

- A. If the Director Procurement Officer sustains the protest in whole or in part and determines that a solicitation, proposed contract award, or contract award does not comply with A.R.S. § 5-509 or this Article, the Director Procurement Officer shall implement an appropriate remedy.
- B. In determining an appropriate remedy, the Director Procurement Officer shall consider all of 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 Lottery,
 6. The urgency of the procurement, and
 7. The impact of the relief on the Lottery's mission.
- C. An appropriate remedy may include one 1 or more of the following:
 1. Decline to exercise an option to renew under the contract;
 2. Terminate the contract;

3. ~~Reissue~~ Amend the solicitation;
4. Issue a new solicitation;
5. Award a contract consistent with A.R.S. § 5-509 and this Article; or
6. Any Implement other relief as is determined necessary to ensure compliance with A.R.S. § 5-509 and this Article.

R19-3-544. Judicial Review

~~Any final decision of the Director, on a protest, contract claim, or controversy, shall be subject to judicial review pursuant to Arizona Revised Statutes, Title 12, Chapter 7, Article 6 by any party to the proceeding before the Director. The complaint seeking review shall be filed with the Superior Court in Maricopa County and served on the Director within the time prescribed pursuant to A.R.S. § 12-904.~~

R19-3-544. Appeals to Protest Decisions to the Director

- A. A person who appeals a decision entered or deemed to be entered by the Procurement Officer on a protest shall file the appeal with the Director within 5 days after the date the decision is received.
- B. Content of appeal. An appeal shall contain:
 1. The information required by R19-3-538(B), including identification of protected information in the manner described in R19-3-541;
 2. A copy of the decision of the Procurement Officer; and
 3. The asserted factual or legal error in the decision from which the appeal is taken.
- C. The Director shall immediately give written notice of an appeal to all interested parties.
- D. The Director shall refer an appeal of a decision on a protest to the Office of Administrative Hearings for disposition. Upon receipt of the findings of fact, conclusion of law, and decision of the Administrative law Judge, the Director shall determine whether a conflict exists between the interests of the appellant and the Lottery. If the Director determines a conflict exists, the Director shall decline to review the decision of the Administrative law Judge and in accordance with A.R.S. § 41-1092.08(B), allow the Administrative Law Judge's decision to become final.

R19-3-545. Stay of Procurement During Appeal

If a stay is issued under R19-3-540, the filing of an appeal shall automatically continue the stay unless the Director makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the state.

R19-3-546. Dismissal Before Hearing

The Director shall dismiss an appeal before scheduling a hearing if the Director makes a written determination that the appeal does not state a valid basis for protest or is under R19-3-544(A).

R19-3-539.R19-3-547. Commission's Rejection of Award

~~No request to~~ If a stay of procurement is issued under R19-3-540, a person shall not request, under A.R.S. § 5-509(C), that the Commission reject an award made by the Director shall be made to the Commission, pursuant to A.R.S. § 5-509(C), until a final decision on any protest appeal has been made by the Director and the award communicated to the Commission.

R19-3-548. Contract Claims

- A. A person who has a contract claim shall file the claim with the Procurement Officer within 12 months after claim arises.
- B. The Procurement Officer shall settle and resolve all contract claims in accordance with R19-3-549.

~~R19-3-540. R19-3-549. Contract Claims and Controversies Resolution of Contract Claims~~

- A. If a ~~controversy contract claim~~ cannot be resolved by mutual agreement of the parties, the Director ~~Procurement Officer~~ shall, upon a written request by the contractor ~~for a final decision~~, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the Director ~~Procurement Officer~~ shall review the facts pertinent to the ~~controversy contract claim~~ and secure any necessary assistance from legal, fiscal, and other advisors.
- B. The Director ~~Procurement Officer~~ shall furnish a copy of the decision to the contractor by any method that provides evidence of receipt. The decision shall include:
1. A description of the ~~controversy contract 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 Director's ~~Procurement Officer's~~ decision, with supporting rationale; and
 5. A paragraph substantially as follows: "This is the final decision of the Director ~~Procurement Officer~~. This decision may not be appealed to the Commission".
- C. The time limit for decisions ~~set forth in~~ under subsection (A) may be extended for good cause for a reasonable time not to exceed 30 days. The Director ~~Procurement Officer~~ shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall will be issued.
- D. If the Director ~~Procurement Officer~~ fails to issue a decision within ~~sixty 60~~ days after ~~the a~~ request is filed or within the time prescribed under subsection (C), the contractor may proceed as if the Director ~~Procurement Officer~~ had issued an adverse decision.

~~R19-3-550. Appeals of Contract Claim Decisions to the Director~~

- A. A person who appeals a decision of the Procurement Officer on a contract claim shall file the appeal with the Director within 5 days from the date the decision is received.
- B. Content of appeal. An appeal shall contain a copy of the decision of the Procurement Officer and the asserted factual or legal error in the decision from which an appeal is taken.
- C. The Director shall refer an appeal of a decision on a contract to the Office of Administrative Hearings for disposition. Upon receipt of the findings of fact, conclusions of law, and decision of the Administrative law Judge, the Director shall determine whether a conflict exists between the interests of the appellant and the Lottery. If the Director determines a conflict exists, the Director shall decline to review the decision of the Administrative law Judge and in accordance with A.R.S. § 41-1092.08(B), allow the Administrative law Judge's decision to become final.

~~R19-3-541. R19-3-551. Debarment and Suspension of Contractors~~

~~The suspension Suspension and or debarment of any a person from consideration for award of contract pursuant to under this Article shall be governed by A.R.S. § 41-2613, except that reference to "Director" shall mean means the Executive Director of the State Lottery.~~

~~R19-3-545. R19-3-552. Exclusive Remedy~~

~~This Article provides the exclusive procedure for asserting a claim against the Lottery; arising in relation to from any procurement conducted under this Article.~~

~~R19-3-546. Renumbered~~

~~R19-3-547. Renumbered~~

~~R19-3-548. Renumbered~~

~~R19-3-549. Renumbered~~