

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

[R06-181]

PREAMBLE

- 1. Sections Affected**
R4-30-304
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 32-106 (A)(1), 32-106 (A)(3), and 32-106(A)(4)
Implementing statute: A.R.S. §§ 32-122.01(A)(2), 32-122.01(A)(3), 32-122.01(B)(2), 32-122.01(B)(3)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 12 A.A.R 1858, June 2, 2006
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Julie Ruff
Address: Arizona State Board of Technical Registration
1110 W. Washington St., Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-4940
Fax: (602) 364-4931
E-mail: julie.ruff@btr.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Board has determined that clarification of this rule is necessary to assist registrants with determining what is or is not a professional document, recognizing where, when, and how professional documents must be sealed, and the requirements for sealing electronically stored professional documents.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
N/A
- 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:**
N/A
- 8. The preliminary summary of the economic, small business, and consumer impact:**
There are no significant economic impacts for registrants.
There are no significant economic impacts on other government agencies.

Notices of Proposed Rulemaking

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Julie Ruff
Address: Arizona State Board of Technical Registration
1110 W. Washington St., Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-4940
Fax: (602) 364-4931
E-mail: julie.ruff@btr.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments will be accepted between 8:00 a.m. and 4:00 p.m., Monday through Friday, at 1110 W. Washington St., Suite 240, Phoenix, AZ 85007, via fax at (602) 364-4931, or by e-mail at julie.ruff@btr.state.az.us for 30 days from the date the rule is published in the Secretary of State's *Register*.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 3. REGULATORY PROVISIONS

Section
R4-30-304. Use of Seals

ARTICLE 3. REGULATORY PROVISIONS

R4-30-304. Use of Seals

- A.** A permanently legible imprint of the registrant's seal and signature shall appear on the following:
1. Each sheet of drawings or maps;
 2. Each of the master sheets when reproduced into a single set of finished drawings or maps;
 3. Either the cover, title, index page, table of contents page, or first sheet of each set of project specifications;
 4. Either the cover, index page, or first sheet of each addenda or change orders to specifications;
 5. Either the cover, index page, or first sheet of bound details when prepared to supplement project drawings or maps;
 6. Either the cover, title, index page, table of contents page, or first sheet of reports, specifications, and other professional documents prepared by a registrant or the registrant's bona fide employee; and
 7. The signature lines of letters and other professional documents prepared by a registrant, or the registrant's bona fide employee; and
- 7-8. Shop drawings requiring professional services or work as described in the Act. Examples of shop drawings ~~not~~ **NOT** requiring seals are those showing only:
- a. Sizing and dimensioning information for fabrication purposes;
 - b. Construction techniques or sequences;
 - c. Components with previous approvals or designed by the registrant of record; or
 - d. Modifications to existing installations not affecting the original design parameters and which do not require additional computations.
- B.** A label describing the name of the project and an original imprint of the registrant's seal and signature shall be applied to all video cassettes containing copies of professional documents.
- C.** ~~If a professional document is stored, filed, or provided to a client, regulatory body or any other person for any reason by computer disk, tape, cd, or any other electronic form, the registrant shall mark each professional document "electronic copy of final document, original sealed document with"~~ and identify the registrant's name and registration number.

Unless a document is signed, sealed, or appropriately marked as required by subsection (D), if a professional document is provided to a client, regulatory body, or any other person for any reason by computer disk, tape, CD, or any other electronic form, the registrant shall mark each professional document, "Electronic copy of final document. Sealed original document is with" and identify the registrant's name and registration number.

- D. A registrant shall sign, date, and seal a professional document:
 - 1. Before the document is submitted to a client, contractor, any regulatory or review body, or any other person, unless the document is marked "preliminary," "draft," or "not for construction"; and
 - 2. In all cases, if the document is prepared for the purpose of dispute resolution, litigation, arbitration, or mediation.
- E. For purposes of subsection (A) all original documents shall include:
 - 1. An original seal imprint or a computer-generated seal that matches the seal on file at the Board's office;
 - 2. An original signature that does not obscure either the registrant's printed name or registration number; and
 - 3. The date the document was sealed.
- F. Methods of transferring a seal other than an original seal imprint or a computer-generated seal are not acceptable.
- G. An electronic signature, as an option to a permanently legible signature, in accordance with A.R.S. Title 41 and Title 44, is acceptable for all professional documents. The registrant shall provide adequate security regarding the use of the seal and signature.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES NONCOMMUNICABLE DISEASES

[R06-177]

PREAMBLE

- 1. **Sections Affected**

R9-4-401	Amend
R9-4-403	Amend
R9-4-404	Amend
R9-4-405	Amend
- 2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-136(A)(7) and (F)
Implementing statutes: A.R.S. §§ 36-133 and 36-606
- 3. **A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 1563, May 12, 2006
- 4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Georgia Yee, Office Chief
Address:	Arizona Department of Health Services Bureau of Public Health Statistics 150 N. 18th Ave., Suite 550 Phoenix, AZ 85007
Telephone:	(602) 542-7321
Fax:	(602) 364-0296
E-mail:	yeega@azdhs.gov
	or
Name:	Kathleen Phillips, Rules Administrator
Address:	Arizona Department of Health Services Office of Administrative Rules 1740 W. Adams, Suite 202 Phoenix, AZ 85007

Notices of Proposed Rulemaking

Telephone: (602) 542-1264
Fax: (602) 364-1150
E-mail: phillik@azdhs.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

A.R.S. § 36-133 requires the Arizona Department of Health Services to develop a cancer registry for the collection, management, and analysis of information on the incidence of cancer in Arizona. *Arizona Administrative Code* Title 9, Chapter 4, Article 4 implements that statute by providing definitions and reporting requirements for hospitals, clinics, pathology laboratories, physicians, dentists, doctors of naturopathic medicine, and registered nurse practitioners to follow, when reporting cancer cases or responding to requests for information from a hospital or the Department. The rules allow the Department to collect information needed to monitor incidence patterns; identify population sub-groups at risk; analyze data relating to the detection, diagnosis, and treatment of persons with cancer; and identify areas that need intervention or prevention programs. Data collected is also used to perform studies and to provide epidemiological information to the medical community.

At the request of a group representing doctors of naturopathic medicine, the Department initiated this rulemaking. The rulemaking corrects unclear references, adds doctors of naturopathic medicine to those required to submit case reports, and clarifies that outpatient radiation treatment centers are to report as clinics. All changes conform to rule-making format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study related to this rulemaking package.

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 preliminary summary of the economic, small business, and consumer impact:

As used in this summary, annual costs/revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

Businesses affected by the rule changes include doctors of naturopathic medicine and outpatient radiation treatment centers. Under the proposed rules, the Department will require doctors of naturopathic medicine to initiate a case report to the Department for patients not referred to a hospital or clinic for treatment of cancer. The Department expects doctors of naturopathic medicine to incur minimal costs due to this change in the rules.

Outpatient radiation treatment centers currently submit case reports to the Department, but from the definition of "clinic," it may not be clear that outpatient radiation treatment centers are considered clinics. The proposed rules are expected to cause minimal costs to an outpatient radiation treatment center, and may benefit the outpatient radiation treatment center, the Department, and the general public by clarifying how radiation treatment centers will report to the Department.

The public will benefit substantially from a complete population-based cancer reporting system that may lead to a reduction in the number of individuals who develop cancer and who may die of cancer. The information gathered and compiled by the Department is used by researchers to perform studies and is used by other health care professionals to provide intervention programs for individuals with cancer.

The Department has determined that the benefits related to public health outweigh any potential costs associated with this rulemaking.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Georgia Yee, Office Chief
Address: Arizona Department of Health Services
Bureau of Public Health Statistics
150 N. 18th Ave., Suite 550
Phoenix, AZ 85007
Telephone: (602) 542-7321
Fax: (602) 364-0296
E-mail: yeega@azdhs.gov
or

Notices of Proposed Rulemaking

Name: Kathleen Phillips, Rules Administrator
Address: Arizona Department of Health Services
Office of Administrative Rules
1740 W. Adams, Suite 202
Phoenix, AZ 85007
Telephone: (602) 542-1264
Fax: (602) 364-1150
E-mail: phillik@azdhs.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has scheduled the following oral proceeding:

Date: July 10, 2006
Time: 1:00 p.m.
Location: 150 N. 18th Ave., Room 540A
Phoenix, AZ 85007
Close of record: 4:00 p.m., July 10, 2006

A person may submit written comments on the proposed rules no later than the close of record to either of the individuals listed in items #4 and #9.

A person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Ruthann Smejkal at (602) 364-3959 or smejkar@azdhs.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

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:

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 4. DEPARTMENT OF HEALTH SERVICES
NONCOMMUNICABLE DISEASES**

ARTICLE 4. CANCER REGISTRY

Section

R9-4-401. Definitions
R9-4-403. Case Reports
R9-4-404. Requirements for Submitting Case Reports and Allowing Review of Hospital Records
R9-4-405. Data Quality Assurance

ARTICLE 4. CANCER REGISTRY

R9-4-401. Definitions

In this Article, unless otherwise specified:

1. No change
2. No change
3. No change
 - a. No change
 - b. No change
4. No change
5. No change

6. No change
7. No change
8. No change
9. No change
10. No change
 - a. No change
 - b. No change
 - c. No change
11. No change
12. No change
13. No change
14. No change
15. "Clinic" means a facility that is not physically connected to or affiliated with a hospital, where a physician, doctor of naturopathic medicine, dentist or registered nurse practitioner provides cancer diagnosis, cancer treatment, or both, and is:
 - a. An outpatient treatment center, as defined in A.A.C. R9-10-101, ~~or~~
 - b. An outpatient surgical center, as defined in A.A.C. R9-10-101, or
 - c. An outpatient radiation treatment center.
16. "Clinical evaluation" means an examination of the body of an individual for the presence of disease or injury to the body, and review of any laboratory test results for the individual by a physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner.
17. No change
18. No change
19. No change
20. No change
21. No change
22. "Designee" means an individual assigned by the governing authority of a hospital or clinic or by another individual acting on behalf of the governing authority to gather information for or report to the Department, as specified in R9-4-403 or R9-4-404.
- ~~22~~23.No change
- ~~23~~24.No change
- ~~24~~25.No change
- ~~25~~26.No change
- ~~26~~27.No change
- ~~27~~28.No change
- ~~28~~29.No change
- ~~29~~30.No change
- ~~30~~31.No change
32. "Governing authority" means the same as in A.R.S. § 36-401.
- ~~31~~33.No change
- ~~32~~34.No change
- ~~33~~35.No change
- ~~34~~36.No change
- ~~35~~37.No change
- ~~36~~38.No change
- ~~37~~39.No change
- ~~38~~40.No change
- ~~39~~41.No change
- ~~40~~42.No change
- 4443."Medical record number" means a unique number assigned by a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner to an individual for identification purposes.
- ~~42~~44.No change
- ~~43~~45.No change
- ~~44~~46.No change
- ~~45~~47.No change
- ~~46~~48.No change
- ~~47~~49.No change
50. "Outpatient radiation treatment center" means a person that is licensed under 12 A.A.C. 1, Article 7, to provide radiation treatment.

~~48~~51. No change

~~49~~52. No change

~~50~~53. No change

a. No change

b. No change

~~51~~54. No change

~~52~~55. No change

~~53~~56. No change

~~54~~57. No change

~~55~~58. No change

~~56~~59. No change

~~57~~60. No change

~~58~~61. No change

~~59~~62. No change

~~60~~63. No change

~~61~~64. "Release" means to transfer care of a patient from a hospital to a physician, a doctor of naturopathic medicine, a registered nurse practitioner, an outpatient treatment center, another hospital, the patient, or the patient's parent or legal guardian, if the patient is under 18 years of age and unmarried.

~~62~~65. "Reporting facility" means a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner that submits a case report to the Department.

~~63~~66. No change

~~64~~67. No change

~~65~~68. No change

a. No change

b. No change

c. No change

d. No change

~~66~~69. No change

~~67~~70. No change

~~68~~71. "Stage group" means a scheme for categorizing a patient, based on the staging classification of the patient's cancer, to enable a physician, doctor of naturopathic medicine, or registered nurse practitioner to provide better treatment and outcome information to the patient.

~~69~~72. No change

a. No change

b. No change

c. No change

~~70~~73. No change

~~71~~74. No change

~~72~~75. No change

~~73~~76. No change

~~74~~77. No change

~~75~~78. No change

~~76~~79. No change

R9-4-403. Case Reports

A. A ~~clinic~~, physician, doctor of naturopathic medicine, dentist, ~~or~~ registered nurse practitioner, or the designee of a clinic, shall:

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

i. No change

j. No change

- k. No change
- l. No change
- m. No change
- n. No change
- o. No change
- p. No change
- q. No change
- r. No change
- s. No change
- t. No change
- u. No change
- v. No change
- w. No change
- x. No change
- 3. No change
- B. ~~A~~ The cancer registry of a hospital with a licensed capacity of fewer than 50 inpatient beds that reports as specified in R9-4-404(A) and the cancer registry of a hospital with a licensed capacity of 50 or more inpatient beds shall:
 - 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
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - o. No change
 - p. No change
 - q. No change
 - r. No change
 - s. No change
 - t. No change
 - u. No change
 - v. No change
 - w. No change
 - x. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. Surgery of regional sites, distant sites, or distant lymph nodes; ~~or~~ and
 - v. Reason for no surgery or that surgery was performed;
 - y. No change
 - z. No change
 - aa. No change
 - bb. No change
 - cc. No change
 - dd. No change
 - ee. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change

- ff. No change
- gg. No change
- hh. No change

- 3. Use codes and coding format supplied by the Department for data items specified in subsection ~~(A)(2)~~ (B)(2) that require codes in the case report.

R9-4-404. Requirements for Submitting Case Reports and Allowing Review of Hospital Records

- A. ~~A~~ The cancer registry of a hospital with a licensed capacity of 50 or more inpatient beds shall ensure that:
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
- B. ~~A~~ The cancer registry or other designee of a hospital with a licensed capacity of fewer than 50 inpatient beds shall either report as specified in subsection (A), or shall at least once every six months:
 - 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - 2. Allow the Department to review the records listed in ~~R9-4-405(B)~~ R9-4-405(A) to obtain the information specified in R9-4-403 about a patient.
- C. If the designee of a clinic submitted 100 or more case reports to the Department in the previous calendar year or expects to submit 100 or more case reports in the current calendar year, the designee of the clinic shall:
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
- D. If the designee of a clinic submitted fewer than 100 case reports to the Department in the previous calendar year and expects to submit fewer than 100 case reports in the current calendar year, the designee of the clinic shall submit an electronic or paper case report to the Department for each patient, within 30 calendar days from the date of diagnosis of cancer in the patient, if the clinic:
 - 1. No change
 - 2. No change
- E. A physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner shall submit an electronic or paper case report to the Department for each patient, within 30 calendar days from the date of diagnosis of cancer in the patient, if the physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner:
 - 1. No change
 - 2. No change
- F. No change
- G. No change
- H. No change
 - 1. No change
 - 2. No change

R9-4-405. Data Quality Assurance

- A. To ensure completeness and accuracy of cancer reporting, upon notice from the Department of at least five business days, a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner required to report under R9-4-404 shall allow the Department to review any of the following records, as are applicable to the facility:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change

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- 7. Records other than those specified in subsections (A)(1) through (A)(6) that contain information about diagnostic evaluation, cancer-directed treatment, or other treatment provided to an individual by the hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner.
- B. The Department shall consider a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner required to report under R9-4-404 as meeting the criteria in R9-4-404 if the hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner submits a case report to the Department for at least 97% of the patients for whom a case report is required under R9-4-404 during a calendar year.
- C. No change
 - 1. No change
 - 2. No change
- D. The Department shall return a case report not prepared according to R9-4-403 to the hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner that submitted the case report, identifying the revisions that are needed in the case report. The hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner shall submit the revised case report to the Department within 15 business days from the date the Department requests the revision.
- E. No change

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

[R06-157]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R12-5-2101 | New Section |
| R12-5-2104 | Amend |
| R12-5-2105 | Amend |
| R12-5-2106 | Amend |
| R12-5-2115 | Amend |
| R12-5-2118 | Amend |
| R12-5-2120 | Amend |
| R12-5-2122 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
 Authorizing statute: A.R.S. § 37-132(A)(1)
 Implementing statute: A.R.S. § 27-552
 - 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
 Notice of Rulemaking Docket Opening: 11 A.A.R. 4144, October 21, 2005
 Notice of Rulemaking Docket Opening: 12 A.A.R. 1858, June 2, 2006
 - 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
 Name: Richard B. Oxford, Director, LIT & T Division
 Address: 1616 W. Adams
 Phoenix, AZ 85007
 Telephone: (602) 542-4602
 Fax: (602) 542-5223
 E-mail: roxford@land.az.gov
 Name: Mike Rice, Manager, Minerals Section
 Address: 1616 W. Adams
 Phoenix, AZ 85007
 Telephone: (602) 542-4628

Notices of Proposed Rulemaking

Fax: (602) 542-3407
 E-mail: mrice@land.az.gov

5. An explanation of the rule, including the agency’s reasons for initiating the rule:

In 1980 and 1982, the statutes governing oil and gas leasing on state lands were extensively revised, thus rendering the majority of the rules for competitive oil and gas leases obsolete or ineffective (Laws 1980, Ch. 80, § 1; Laws 1982, Ch. 299, § 2). The remaining rules are applicable to conflicting applications for non-competitive oil and gas leases or simultaneous filings for non-competitive oil and gas leases, and are, in part, repetitive or inconsistent with astute, contain antiquated language and require updating to meet current Secretary of State’s rulewriting standards.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Agency did not review any study relevant to the 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 preliminary summary of the economic, small business, and consumer impact:

The Department maintains 227 oil and gas leases encompassing 374,663 acres of Trust land. *Table 1* summarizes oil and gas revenue production for Fiscal Years 2000-2005. The revenues collected are primarily oil and gas lease rentals. Only in FY 2002-2003 did commercial production of carbon dioxide gas occur, producing 21,816 tons or 375 million cubic feet of carbon dioxide gas, and paid a royalty to the state.

Table 1. Oil and gas leases, acreages and revenues from State Trust Lands from Fiscal Years 2000 - 2004

Fiscal Year	Number of Leases	Number of Acres	Rental Revenue	Royalty Revenues
2000	109	191,500	\$200,000	0
2001	136	233,800	313,600	0
2002	190	323,971	476,900	0
2003	213	363,600	471,600	\$21,800*
2004	228	382,127	482,600	0
2005	227	374,663	460,500	0

*Carbon dioxide royalty

The majority of the Department’s oil and gas leases are located in Apache County in the St. Johns – Springerville area. The leases focus on the large helium and carbon dioxide resource field within the area. If developed, the Department estimates royalties will exceed \$100 million over the life of the resource. The State and Trust beneficiaries will benefit from development of these reserves as will many small businesses and individuals in the region resulting from retail sales, labor and supplies associated with the exploration and development of the gas field.

Costs to an oil and gas lease applicant include personal or staff time to research the records of various agencies (i.e. Arizona State Land Department, Arizona Oil and Gas Commission, U.S. Department of Energy) and institutions (i.e. University of Arizona, Department of Geological Sciences) to collect data in order to compile the information required for a state oil and gas lease application. As oil and gas resource development requires the interpretation of highly specialized geological data, an applicant may also require the consulting services of a professional geologist whose fees are approximately \$400 - \$500 per day. Plans of operations, reclamation of drill site, and compliance with other laws and rules of other state, federal and local government agencies, will also add to the applicant’s costs to explore, drill and develop oil and gas resources on state land. Pursuant to A.R.S. § 27-560, the State Land Commissioner may require the applicant to post a bond to ensure reclamation and compensation to the surface lessee in the event of damage to the lessee’s improvements, i.e. fencing.

As competitive oil and gas leases are auctioned to the highest and best bidder; the applicant will need to secure funding to compete against competitive bidders. The annual rental, \$1.00 per acre under lease, is paid in advance by the successful bidder and is in addition to the bid price and bonus bid.

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The applicant will also incur costs associated with oil and gas resource exploration including:

1. Costs in exploration and assessment;
2. Costs in oil and gas resource development;
3. Marketing costs;
4. Equipment, labor costs;
5. Taxes;
6. Other permits that may be required (state, federal, local government).

Historically, there has been a limited amount of oil and gas exploration on Arizona's Trust lands. What little exploration there has been did not develop beyond the initial leasing stage. One of the major administrative problems associated with oil and gas leasing and development is the preponderance of state and federal laws and rules governing the activity. Exploration and development of oil and gas resources as well as compliance with multiple agency rules is costly, in time and money, to the applicants as well as to the various agencies.

The Department proposes to amend its oil and gas leasing rules to ensure clarity and efficient as well as to prevent the Department from being an impediment to any future interest in exploration and development of oil and gas resources on Trust lands.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Richard B. Oxford, Director, L.I., T. & T. Division

Address: 1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

E-mail: roxford@land.az.gov

Name: Mike Rice, Manager, Minerals Section

Address: 1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4628

Fax: (602) 542-3407

E-mail: mrice@land.az.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No public proceeding is scheduled. Persons may submit written comments to or request an oral proceeding be held on the proposed rules by submitting the comments or a written request for oral proceeding no later than 5:00 p.m., July 28, 2006, to either of the following:

Name: Richard B. Oxford, Director, L.I., T. & T. Division

Address: 1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

E-mail: roxford@land.az.gov

Name: Mike Rice, Manager, Minerals Section

Address: 1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4628

Fax: (602) 542-3407

E-mail: mrice@land.az.gov

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. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 21. OIL AND GAS LEASES

Section

- R12-5-2101. ~~Expired~~ Completed Oil and Gas Lease Application
R12-5-2104. ~~Applications~~ Application for Noncompetitive Leases ~~Lease~~ —Time for Filing
R12-5-2105. Simultaneous Filings — Conflicts
R12-5-2106. ~~Department's Decisions — Conflicts~~ Noncompetitive Lease; Conflict
R12-5-2115. Competitive Lease; Award of Lease
R12-5-2118. Cooperative and Unit Agreements
R12-5-2120. Surrender
R12-5-2122. Monthly Statements Statement

ARTICLE 21. OIL AND GAS LEASES

R12-5-2101. ~~Expired~~ Completed Oil and Gas Lease Application

An oil and gas lease application, filed pursuant to this Article, shall be considered completed if all blank spaces are addressed. The applicant may indicate “not applicable” or “N/A” on any blank within the application as appropriate. The applications certification page is to be completed pursuant to the instructions. “Completed” application also means appropriately signed and dated.

R12-5-2104. ~~Applications~~ Application for Noncompetitive Leases ~~Lease~~ —Time for Filing

The Department will not issue an oil and gas lease on land already leased for that purpose. A person shall submit an ~~Applications~~ application for a noncompetitive oil and gas ~~leases~~ lease upon a form prescribed and furnished by the Department. ~~shall be received for filing in the office of the Department in Phoenix during the office hours of any business day. Except as herein after specifically provided, all such applications received, whether by U.S. Mail or by personal delivery over the counter, shall be immediately stamped with the date and time of filing. Each application filed by U.S. Mail shall be considered to have been filed in the Department at the time and date it is delivered to the mail room of the Department. The completed application shall be submitted to the Department's Phoenix Office, 1616 W. Adams, Phoenix, AZ 85007, to the attention of Public Records, along with payment of the required fee. The time of filing so indicated on each an application shall evidence the priority of the right to a lease of the first qualified applicant and the right to a lease which may be had thereby; subject, however, to the who files a completed application together with required fees and advance rental. adjudication~~ Resolution of conflicts which may arise by reason of applications resulting from simultaneously filed as hereinafter set forth. applications, shall be in accordance with rules of this Article.

R12-5-2105. Simultaneous Filings — Conflicts

~~In the event it is determined that if~~ If two or more applications for a lease filed as provided for in this Article have been filed at the same time as indicated by the time-stamp applied as set forth in rule 4, this Article, such applications shall be deemed to be simultaneous filings. In the event two or more simultaneously filed applications include any identical land which are identical, a conflict shall exist as to such lands on the identical land. Adjudication Resolution of conflicts shall be in accordance with the provisions of rule 6 thereof. rules of this Article.

R12-5-2106. ~~Department's Decisions — Conflicts~~ Noncompetitive Lease; Conflict

~~The Department will not issue any lease pursuant to an application unless the land is vacant, and then in accordance with the following procedure:~~

- ~~1. No conflict. Where there is no conflict, the Department shall issue a noncompetitive lease to the first qualified applicant.~~
- ~~2. Conflicts. Where there is a conflict, and the Department determines that a drawing shall be held for a noncompetitive oil and gas lease, the Department shall provide for conduct a drawing between the qualified applicants to determine which applicant shall be entitled to a lease. The Department shall give notice of the drawing to the conflicting applicants by registered certified mail, fixing a date and hour on which a drawing will be held for the land in conflict, which date shall not be less than 10 days or more than 30 days from the date of said notice. The applicants may~~

Notices of Proposed Rulemaking

remove the conflict by amended application, which shall ~~carry~~ reflect the same filing date as the original application, at any time prior to the date of the drawing. ~~Rentals advanced applicable to Advance rentals for the lands withdrawn from conflict shall be refunded to the applicant. If, however, the conflict is not so removed, the drawing will be held and the lease, by the Department decision, will be awarded to the winner. The Department will then shall give notice of the results of said the drawing to each applicant.~~

R12-5-2115. Competitive Lease; Award of Lease

~~When state lands are located within a known geological structure of a producing oil or gas field, the oil and gas interest in the land shall be leased only by sealed bid. Following Within 30 days of the opening of the sealed bids, the Department, subject to its right to reject any or all bids, a bid, shall award the lease to the successful highest and best bidder. Notice of the Department's action shall be forthwith transmitted The Department shall give notice of its decision, by certified mail, to the interested parties applicants. The Department shall return forthwith all checks accompanying rejected bids. If the Department awards the lease be awarded, two copies of the lease, a lease offer will shall be sent to the successful bidder, and he the successful bidder will shall be required within 30 days from receipt thereof to execute them the leases and pay the first year's rental, the cost of publication, and the reasonable expenses of the sale within 30 days from receipt of the lease offer. If a bidder, after having been awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited. If two or more tracts are awarded to any bidder where the acreage does not exceed more than two sections of land, such tracts may, if not otherwise prohibited by law, be included in a single lease.~~

R12-5-2118. Cooperative and Unit Agreements

Commitment of leased state lands to cooperative or unit agreements shall be conditioned on the following procedure and requirements:

1. ~~That there be submitted no less than 60 days prior to submission of a proposed cooperative or unit agreement as provided by statute, an applicant proposing a cooperative or unit agreement shall submit to the Department two copies of a plat map showing the area to be unitized, together with such structural and geological information as will tend to support that supports the delineation of the area to be unitized. The information so furnished shall be held confidential until released by the applicant or applicants.~~
2. ~~That no less than 60 days prior to submission of a proposed cooperative or unit agreement, as provided by statute, an applicant proposing a cooperative or unit agreement shall submit there be submitted to the Department two preliminary drafts of the proposed cooperative or unit agreement for approval as to form the Department's review. Where the amount of federal land predominates in any a proposed cooperative or unit area, the standard form of unit agreement of used by the United States should be followed.~~
3. ~~Upon determination by the Department that it is for the best interest of the state to commit leased state lands to a cooperative or unit agreement for the development and operation of an oil or gas pool, the Department shall thereafter finally join in and consent to such agreement when submitted for final approval.~~
4. ~~3. A cooperative or unit agreement shall not affect the leasehold of any leased state lands lying outside of the cooperative or unit area, and shall not be effective as to the affect leaseholds lying within the cooperative or unit area unless the lessees thereof and the then approved operating interests shall subscribe to such an commit to the agreement.~~
5. ~~The terms and conditions of leases covering state lands will be modified and changed to the extent necessary to conform the same to the terms and conditions of the agreement.~~

R12-5-2120. Surrender

~~A lessee may surrender to the Department a lease or any part thereof of a lease, but not less than a an approximate quarter of a quarter section. or the approximate equivalent thereof, may be surrendered at any time by the record title holder thereof to the lessor upon payment to the Department of all amounts then due as to the lands so surrendered. No refund of any part of the cash consideration or rental theretofore paid shall be made to the lessee or record title holder upon any such surrender. Such surrender shall be made by depositing with A lessee shall surrender the lease or any part of a lease to the Department by submitting one copy of the instrument of surrender, together with the prescribed surrender fee and thereafter any rentals or monies owed, the lessee or record title holder shall incur no further liability under said lease as to the land so surrendered.~~

R12-5-2122. Monthly Statements Statement

Monthly statement of production and other statements required of the lessee under the lease shall be made in triplicate and shall be transmitted submitted to the Department.

NOTICE OF PROPOSED RULEMAKING

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

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

[R06-178]

PREAMBLE

1. Sections Affected

Rulemaking Action

R19-3-501	Amend
R19-3-502	Repeal
R19-3-502	New Section
R19-3-503	Amend
R19-3-504	Amend
R19-3-505	Repeal
R19-3-505	New Section
R19-3-506	Repeal
R19-3-506	New Section
R19-3-507	Repeal
R19-3-507	New Section
R19-3-508	Repeal
R19-3-508	New Section
R19-3-509	Repeal
R19-3-509	New Section
R19-3-510	Repeal
R19-3-510	New Section
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R19-3-522	New Section
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R19-3-524	New Section
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R19-3-525	New Section
R19-3-526	Repeal
R19-3-526	New Section
R19-3-527	Repeal
R19-3-527	New Section
R19-3-528	Repeal

Notices of Proposed Rulemaking

R19-3-528	New Section
R19-3-529	Repeal
R19-3-529	New Section
R19-3-530	Repeal
R19-3-530	New Section
R19-3-531	Repeal
R19-3-531	New Section
R19-3-532	Repeal
R19-3-532	New Section
R19-3-533	Repeal
R19-3-533	New Section
R19-3-534	Repeal
R19-3-534	New Section
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R19-3-540	New Section
R19-3-541	Repeal
R19-3-541	New Section
R19-3-542	Repeal
R19-3-542	New Section
R19-3-543	Repeal
R19-3-543	New Section
R19-3-544	Repeal
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R19-3-552	Repeal
R19-3-552	New Section
R19-3-553	New Section
R19-3-554	New Section
R19-3-555	New Section
R19-3-556	New Section
R19-3-557	New Section
R19-3-558	New Section
R19-3-559	New Section
R19-3-560	New Section
R19-3-561	New Section
R19-3-562	New Section

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

Authorizing statute: A.R.S. § 41-2501(F)

Implementing statute: A.R.S. §§ 5-509, 41-2501(F)

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 371, January 30, 2004

Notice of Rulemaking Docket Opening: 11 A.A.R. 4145, October 21, 2005

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

Name: J. Art Macias Jr., Executive Director

Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034

Telephone: (480) 921-4505

Fax: (480) 921-4488

E-mail: amacias@azlottery.gov

or

Name: Pam DiNunzio, Budget Manager

Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034

Telephone: (480) 921-4489

Fax: (480) 921-4425

E-mail: pdinunzio@azlottery.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Lottery's Procurement rules establish the policies and procedures for procurements relating to lottery game design and operation or the purchase of lottery equipment, tickets and related materials. The amended rules remove outdated terminology and procedures, clarify existing language, and add new language as necessary. The rules are substantially equivalent to the policies and procedures of the Arizona Procurement Code as required in A.R.S. § 41-2501(F), and conform to recent state procurement rule changes approved by the Governor's Regulatory Review Council and effective April 8, 2006.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

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 preliminary summary of the economic, small business, and consumer impact:

This rulemaking clarifies existing language and conforms Lottery rules to the recently approved state procurement rules. The rules prescribe procurement procedures pertaining to lottery game design and operation or the purchase of lottery equipment, tickets and related materials. The Lottery anticipates amendments to Article 5 will impact the agency, as well as businesses that supply products and/or services to the Lottery.

A. *The Arizona State Lottery.* Costs to the Lottery related to this rulemaking include time spent by procurement staff to process purchases and secure contracts for the agency. These costs are included in the agency's annual appropriation and are considered part of normal operating expenses. The Lottery does not anticipate any additional costs to the agency or current procurement functions as a result of this rulemaking. In fact, the proposed changes are expected to make purchases easier and improve procurement efficiency.

B. *Businesses Directly Affected by this Rulemaking.* Businesses impacted by these rules are vendors wishing to supply products and/or services to the Lottery. The rules provide for competition, consistency, and equal treatment of all vendors with respect to procurement procedures. Improved organization, presentation, and clarity will make the rules easier to understand for potential vendors. Businesses will also benefit from consistency between Lottery procurement rules and state procurement rules.

Notices of Proposed Rulemaking

Small businesses will benefit because the set-aside requirement as provided in R19-3-532 has increased to \$50,000. These purchases must be awarded to businesses that employ less than 100 employees, or that had gross annual receipts of less than \$4 million in the last complete fiscal year. This is consistent with revisions to state procurement rules and will significantly increase the number of contracts exclusively available to small businesses.

In FY05, approximately 26% of Lottery procurements went to minority, women, or small businesses, which amounted to 31% of total expenditures. However, a large portion of total annual purchases were associated with specialized Lottery needs such as the on-line game system and instant ticket printing services. If these categories are excluded from calculations, the percentage of purchases to small businesses increases to 27% and represents 73% of total expenditures.

This rulemaking clarifies procurement procedures and will not have any identifiable economic impact on political subdivisions of the state, private and public employment, Lottery retailers, or the general public. Although this rule-making will not have any measurable impact on state revenues, more efficient procurement procedures will help ensure the best value to the state when purchasing goods and services.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: J. Art Macias Jr., Executive Director
Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034
Telephone: (480) 921-4505
Fax: (480) 921-4488
E-mail: amacias@azlottery.gov
or

Name: Pam DiNunzio, Budget Manager
Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034
Telephone: (480) 921-4489
Fax: (480) 921-4425
E-mail: pdinunzio@azlottery.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: August 11, 2006
Time: 10:00 a.m.
Location: Arizona Lottery
4740 E. University Drive
Phoenix, AZ 85034
Nature: Oral Proceeding

The close of record is 5:00 p.m. on August 10, 2006, for written comments and at the end of the oral proceeding for verbal comments.

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:

Not applicable

13. 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

Section

- R19-3-501. Definitions
- R19-3-502. ~~Time and Place of Market Price~~ Written Determination
- R19-3-503. Confidential Information
- R19-3-504. General Provisions
- R19-3-505. ~~Assignment of Rights and Duties~~ Prospective Suppliers List
- R19-3-506. ~~Change of Name~~ Source Selection Method: Determination Factors
- R19-3-507. ~~Installment Purchases~~ Solicitation
- R19-3-508. ~~Multiple source Contracting~~ Bid Solicitation Requirements
- R19-3-509. ~~Competitive Sealed Bidding~~ Request for Proposal Solicitation Requirements
- R19-3-510. ~~Competitive Sealed Proposals~~ Pre-Offer Conferences
- R19-3-511. ~~Small Business Set aside~~ Solicitation Amendment
- R19-3-512. ~~Procurements Not Exceeding an Aggregate Amount of \$25,000~~ Modification or Withdrawal of Offer Before Offer Due Date and Time
- R19-3-513. ~~Procurements Not Exceeding an Aggregate Amount of \$10,000~~ Cancellation of a Solicitation Before Offer Due Date and Time
- R19-3-514. ~~Sole Source Procurement~~ Receipt, Opening, and Recording of Offers
- R19-3-515. ~~Emergency Procurements~~ Late Offers, Modifications, Withdrawals
- R19-3-516. ~~Cancellation of Invitation for Bids or Requests for Proposals~~ Cancellation of Solicitation After Receipt of Offers and Before Award
- R19-3-517. ~~Responsibility of Bidders and Offerors~~ One Offer Received
- R19-3-518. ~~Prequalification of Contractors~~ Offer Mistakes Discovered After Offer Opening and Before Award
- R19-3-519. ~~Bid and Contract Security~~ Extension of Offer Acceptance Period
- R19-3-520. ~~Bid and Performance Bonds for Material or Service Contracts~~ Determination of Not Susceptible for Award
- R19-3-521. ~~Cost or Pricing Data~~ Bid Evaluation
- R19-3-522. ~~Types of Contracts~~ Clarification of Proposal Offers
- R19-3-523. ~~Approval of Accounting System~~ Proposal Negotiations with Responsible Offerors and Revisions of Offers
- R19-3-524. ~~Multi-term Contracts~~ Final Proposal Revisions
- R19-3-525. ~~Right to Inspect Plant~~ Evaluation of Proposal Offers
- R19-3-526. ~~Right to Audit Records~~ Responsibility Determinations
- R19-3-527. ~~Reporting of Anticompetitive Practices~~ Bid Contract Award
- R19-3-528. ~~Anticompetitive Practices among Bidders or Offerors~~ Proposal Contract Award
- R19-3-529. ~~Retention of Procurement Records~~ Mistakes Discovered After Bid Award
- R19-3-530. ~~Record of Procurement Actions~~ Mistakes Discovered After Proposal Award
- R19-3-531. ~~Content of Specifications~~ Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535
- R19-3-532. ~~Types of Specifications~~ Solicitation – Request for Quotation
- R19-3-533. ~~Confidentiality~~ Request for Quotation Issuance
- R19-3-534. ~~Maximum Practicable Competition~~ Quotation Contract Award
- R19-3-535. ~~Requirements of Nonrestrictiveness~~ Sole Source Procurements
- R19-3-536. ~~Preparation of Specifications by Persons Other than State Personnel~~ Emergency Procurements
- R19-3-537. ~~Conflicts of Interest~~ Competition Impracticable Procurements
- R19-3-538. ~~Filing of a Protest~~ Request for Information
- R19-3-539. ~~Time for Filing Protest~~ Demonstration Projects
- R19-3-540. ~~Stay of Procurement During Protest~~ General Services Administration Contracts
- R19-3-541. ~~Confidential Information~~ Standard Terms and Conditions Contract Clauses
- R19-3-542. ~~Decision by the Procurement Officer~~ Assignment of Rights and Duties
- R19-3-543. ~~Remedies~~ Change of Name
- R19-3-544. ~~Appeals to Protest Decisions to the Director~~ Contract Change Orders and Amendments
- R19-3-545. ~~Stay of Procurement During Appeal~~ Multi-term Contracts
- R19-3-546. ~~Dismissal Before Hearing~~ Terms and Conditions

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R19-3-547.	<u>Commission's Rejection of Award Determination of Fair and Reasonable Price</u>
R19-3-548.	<u>Contract Claims Submission and Certification of Cost or Pricing Data</u>
R19-3-549.	<u>Resolution of Contract Claims Refusal to Submit Cost or Pricing Data</u>
R19-3-550.	<u>Appeals of Contract Claim Decisions to the Director Defective Cost or Pricing Data</u>
R19-3-551.	<u>Debarment and Suspension of Contractors Protest of Solicitations and Contract Awards</u>
R19-3-552.	<u>Exclusive Remedy Stay of Procurements During the Protest</u>
R19-3-553.	<u>Resolution of Solicitation and Contract Award Protests</u>
R19-3-554.	<u>Remedies by the Procurement Officer</u>
R19-3-555.	<u>Agency Report</u>
R19-3-556.	<u>Controversies Involving Contract Claims Against the Lottery</u>
R19-3-557.	<u>Procurement Officer's Decision</u>
R19-3-558.	<u>Issuance of a Timely Decision</u>
R19-3-559.	<u>Appeals and Reports to the Director</u>
R19-3-560.	<u>Controversies Involving Lottery Claims Against the Contractor</u>
R19-3-561.	<u>On-Line Solicitation Process</u>
R19-3-562.	<u>Guidance</u>

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. "Bid" means an offer in response to solicitation.
3. ~~3.~~ "Business" means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.
3. ~~4.~~ "Change order" means a document signed by the Director which directs the contractor to make a change that the contract authorizes the Director to order.
5. "Competitive range" means the range determined on the basis of the criteria stated in the solicitation and shall include all offers that have a reasonable chance of being selected for award.
4. ~~6.~~ "Contract" means an agreement, regardless of what it is called, for the procurement of ~~lottery~~ Lottery equipment, tickets, and related materials.
5. ~~7.~~ "Contract ~~modification~~ amendment" means a written alteration in the terms or conditions of a contract accomplished by mutual action of the parties to the contract or a unilateral exercise of a right contained in the contract.
6. ~~8.~~ "Contractor" means a person who has a contract with the Lottery.
7. ~~9.~~ "Cost analysis" means the evaluation of cost data.
8. ~~10.~~ "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or are expected to be incurred by the contractor in performing the contract.
9. ~~11.~~ "Cost-plus-a-percentage-of-cost-contract" means a contract under which the parties agree, before completion of the contract work, that the fee is a predetermined percentage of the total cost of the work the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
10. ~~12.~~ "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs 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.
11. ~~13.~~ "Days" means calendar days and is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
12. ~~14.~~ "Director" means the Executive Director of the State Lottery.
13. ~~15.~~ "Discussions" means 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."
14. ~~16.~~ "Filed" means delivered to the office of the Director. A time/date stamp affixed to a document by the office of the Director when the document is delivered determines the time of filing.
17. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
15. ~~18.~~ "Incremental award" means a grant of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
16. ~~19.~~ "Interested party" means an ~~actual or prospective bidder or offeror or prospective 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. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
17. ~~20.~~ "Invitation for bids" means all documents, whether attached or incorporated by reference, that are used to solicit bids in accordance with R19-3-508.
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.~~
19. ~~21.~~ "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.
20. ~~22.~~ "Multiple award" means a grant of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.
21. ~~23.~~ "Multi-step sealed bidding" means a two-phase bidding process consisting of a technical phase and a price phase.
24. ~~"Negotiation" means an exchange or series of exchanges between the Lottery and an offeror or contractor that allows the Lottery of the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules of statutes.~~
25. "Offer" means a response to a solicitation.
26. "Offeror" means a person that responds to a solicitation.
22. ~~27.~~ "Person" means any corporation, limited liability company, limited liability partnership, partnership, business, individual, union, committee, club, other organization, or group of individuals.
28. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
23. ~~29.~~ "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any lottery materials or services. Procurement consists of all functions that pertain to obtaining any lottery material or services, including description or requirements, selection and solicitation of sources, preparation and award of contract, and contract administration. all functions that pertain to obtaining any materials or services for the design or operation of a Lottery game or the purchase of Lottery equipment, tickets and related materials.
30. "Procurement file" means the official records file of the Director whether located in the office of the Director or at a public procurement unit.
31. "Procurement request" means the document that initiates a procurement.
32. "Proposal" means an offer submitted in response to a solicitation.
33. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
24. ~~"Proprietary specification" means a statement 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.~~
25. ~~34.~~ "Purchase description" means the words used in a solicitation to describe lottery Lottery materials to be procured and includes specifications attached to, or made a part of, the solicitation.
26. ~~35.~~ "Purchase request" or "purchase requisition" means a document or electronic transmission in which the Director requests that a contract be entered into for a specific need and may include a description of a requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information needed to make a written determination required by this Article.
27. ~~36.~~ "Request for proposals" means all documents, whether attached or incorporated by reference, that are used to solicit proposals in accordance with R19-3-509.
28. ~~37.~~ "Responsible bidder or offeror" means a person who has the capability to perform contract requirements and the integrity and reliability necessary to ensure a good faith performance.
29. ~~38.~~ "Responsive bidder or offeror" means a person who submits a bid that conforms in all material respects to the invitation for bids or request for proposals.
39. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through on-line bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
30. ~~40.~~ "Services" means the labor, time, or effort furnished by a contractor 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.
31. ~~41.~~ "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" for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than four million dollars for the last complete fiscal year.

- 32- ~~42.~~ “Solicitation” means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other document by which the Director invites bids or proposals invitation or request issued by the Lottery to invite a person to submit an offer.
- 33- ~~43.~~ “Specification” means a description of the physical or functional characteristics, or of the nature of a lottery Lottery material or service. Specification includes a description of any requirement for inspecting, testing, or preparing a lottery Lottery material for delivery.
- 34- ~~44.~~ “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.
45. “Suspension” means an action taken by the Director or the state procurement office that temporarily disqualifies a person from participating in a state procurement process.
- 35- ~~46.~~ “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- ~~47.~~ “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 information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

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

If the price of a good at a time or 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 that in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the good to or from the other place.

- A.** If a written determination is required under applicable law, the procurement officer shall include the basis for the action taken in the written determination.
- B.** The procurement officer shall place the written determination into the Lottery’s procurement file.
- C.** A procurement file is considered the official records file of the Lottery.

R19-3-503. Confidential Information

- ~~**A.** If a person believes a bid, proposal, offer, specification, or protest contains information that should be withheld from the public, the person shall advise the Director of this fact in a written statement that includes why the information should be withheld.~~
- ~~**B.** The Director shall review the statement and information and issue a written decision whether the information will be withheld.~~
- ~~**C.** The Director shall provide a copy of the written decision to the person that requested the information be withheld.~~
- A.** If a person wants to assert that a person’s offer, specification, or protest contains a trade secret or other proprietary information; a person shall include with the submission a statement supporting this assertion. A person shall clearly designate the beginning and end of any information that is designated a trade secret or other proprietary information, using the term “confidential.” Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B.** Until a final determination is made under subsection (D), the procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by the procurement officer to have a legitimate Lottery interest.
- C.** Upon protest to a confidential submission, the procurement officer shall request the offeror and protestor submit factual and legal comments on the issue by a date certain.
- D.** After reviewing the statements and/or the expiration of the time to comment, the procurement officer shall make a determination that:
1. The designated information is confidential and the procurement officer shall not disclose the information except to those individuals deemed by the procurement officer to have a legitimate Lottery interest.
 2. The designated information is not confidential; or
 3. Additional information is required before a final confidentiality determination can be made.
- E.** If the procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination. The procedures and requirements for review set forth in A.R.S. Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes apply to such a review by the Director.
- F.** The procurement officer may release information designated as confidential under subsection (A) if:
1. A request for review is not received by the procurement officer within the time period specified in the notice; or
 2. The Director, after review of the recommended findings of fact and conclusions of law, makes a written determination that the designated information is not confidential.

R19-3-504. General Provisions

- A. A person that participates in any aspect of a specific procurement as an advisor to the Lottery shall not receive any direct or indirect benefit from a contract for the procurement.
- B. The Director shall not pay for any material or service unless fully approved.
- ~~C. The Director shall use the source selection procedures established by the State Procurement Office when selecting a source selection for a procurement.~~

R19-3-505. Assignment of Rights and Duties Prospective Suppliers List

~~A Lottery contractor shall not transfer or otherwise assign its rights and duties without the written consent of the Director.~~

- A. The procurement officer shall compile and maintain a prospective suppliers list. To be included on the prospective suppliers list, a person shall register with the procurement officer the company name, address, e-mail, contact name and area of product or service interest.
- B. The procurement officer may remove suppliers from the prospective suppliers list if a notice or e-mail sent to the supplier is returned. The procurement officer shall maintain a record of the date and reason for removal of a supplier from the prospective suppliers list.

R19-3-506. Change of Name Source Selection Method: Determination Factors

~~If a contractor 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 enter into a written agreement with the contractor in the changed name, providing that no terms and conditions of the contract are changed.~~

- A. The procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent A.R.S. §§ 5-509 and 41-2501(F).
- B. If the procurement officer believes that any existing Arizona state contract procured through the Arizona Procurement Code and rules thereunder is sufficient to satisfy the Lottery's requirements; the procurement officer may procure those materials and services covered by such contracts.
- C. Before soliciting for offers for a competitive sealed proposal, the procurement officer shall determine in writing that an invitation for bid is not practicable or advantageous to the Lottery. Competitive sealed bidding may not be practicable or advantageous if it is necessary to:
 - 1. Use a contract other than a fixed-price type;
 - 2. Negotiate with offerors concerning the technical and price aspects of their offers and any other aspects of their offer or the solicitation;
 - 3. Permit offerors to revise their offers; or
 - 4. Compare the different price, quality, and contractual factors of the offers submitted.
- D. The procurement officer may make a class determination that it is either not practicable or not advantageous to the Lottery to procure specified types of materials or services by invitation for bid. The procurement officer may modify or revoke a class determination at any time.
- E. The procurement officer shall not award a contract or incur an obligation on behalf of the Lottery unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

R19-3-507. Installment Purchases Solicitation

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

- A. The procurement officer shall issue a solicitation at least 14 days before the offer due date and time, unless the procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the procurement officer shall document the specific reasons in the procurement file.
- B. The procurement officer shall:
 - 1. Advertise the procurement not less than two weeks before offer due date at least one time in a newspaper of general circulation and place the notice on the Lottery web site; and
 - 2. At a minimum, provide written notice to the prospective suppliers that have registered with the Lottery's procurement officer for the specific material, service, or construction solicited.

R19-3-508. Multiple source Contracting Bid Solicitation Requirements

- ~~A. The Lottery shall make an incremental award if the Director determines in writing that the award is necessary to obtain the required quantity or delivery.~~
- ~~B. The Lottery shall make a multiple award 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.~~

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The procurement officer shall include the following in the solicitation:

1. Instruction to offerors, including:
 - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
 - b. The deadline date for requesting a substitution or exception to the solicitation;
 - c. The manner by which the offeror is required to acknowledge amendments;
 - d. The minimum required information in the offer;
 - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
 - f. Any specific responsibility criteria;
 - g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
 - h. Any evaluation criteria;
 - i. A statement of where documents incorporated by reference are available for inspection and copying;
 - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
 - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
 - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
 - n. Any bid security required;
 - o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
 - q. Any other offer submission requirements;
2. Specifications, including:
 - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equal specification is used, instructions that use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
 - c. Any other specification requirements;
3. Terms and Conditions, including:
 - a. Whether the contract will include an option for extension; and
 - b. Any other contract terms and conditions.

R19-3-509. Competitive Scaled Bidding Request for Proposal Solicitation Requirements

- A.** ~~The Lottery shall include a purchase description and all contractual terms and conditions applicable to a procurement in any invitation for bids issued.~~
- B.** ~~In accordance with this Article, the Lottery shall give public notice of an invitation for bids before the date set in the invitation for the opening of bids. The notice shall be published one or more times in a newspaper of general circulation before bid opening. If the invitation for bids is for the procurement of services, the notice shall be published twice in a newspaper within this state. The second publication of the notice shall be not less than six nor more than 10 days after the first publication and not less than two weeks before bid opening.~~
- C.** ~~The Lottery shall open bids publicly at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information specified in this Article shall be recorded and placed in the contract file. This record shall be open to public inspection at the bid opening. 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 shall unconditionally accept bids without alteration or correction, except as authorized in this Article. Bids shall be evaluated based only on the criteria and requirements in the invitation for bids.~~
- E.** ~~The Director may permit a bidder to correct or withdraw an erroneous bid before or after bid opening, if the Director determines that the bidder made a bid mistake. After bid opening, 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 this Article, the Director shall support a decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on a bid mistake by a written determination.~~
- F.** ~~The Lottery shall award a contract to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria in the invitation for bids. The amount of 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.~~ A multi-step sealed bidding method may be used if the Director determines in writing that it is not practical to prepare a definitive purchase description initially that is suitable to permit an award based on competitive sealed bidding. The multi-step sealed bidding method involves issuing an invitation for bids requesting the submission of technical offers followed by a second invitation for bids requesting the submission of price offer. The second invitation for bids shall be limited to those bidders whose technical offers are determined to be acceptable under the criteria in the first invitation for bids.
- ~~H.~~ If the price of a recycled paper product that conforms to specifications is within 5% of a low bid product that is not recycled and the recycled product bidder is otherwise the lowest responsible and responsive bidder, the Lottery shall make the award to the bidder offering the recycled product.

The procurement officer shall include the following in the solicitation:

1. Instructions to offerors, including:
 - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
 - b. The deadline date for requesting a substitution or exception to the solicitation;
 - c. The manner by which the offeror is required to acknowledge amendments;
 - d. The minimum information required in the offer;
 - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
 - f. Any specific responsibility or susceptibility criteria;
 - g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
 - h. Evaluation factors and the relative order of importance;
 - i. A statement of where documents incorporated by reference are available for inspection and copying;
 - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
 - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
 - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
 - n. Any offer security required;
 - o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p. Any cost or pricing data required;
 - q. The type of contract to be used;
 - r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award and that fall within the competitive range; and
 - s. Any other offer requirements specific to the solicitation.
2. Specifications, including:
 - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equal specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
 - c. Any other specification requirements specific to the solicitation.
3. Terms and Conditions, including:
 - a. Whether the contract is to include an extension option; and
 - b. Any other contract terms and conditions.

R19-3-510. ~~Competitive Sealed Proposals~~ Pre-Offer Conferences

- ~~A.~~ If the Director determines in writing that the use of competitive sealed bidding is not practicable or not advantageous to the Lottery, the Lottery may enter into a contract by competitive sealed proposals.
- ~~B.~~ The Lottery shall solicit competitive sealed proposals through a request for proposals.
- ~~C.~~ The Lottery shall give public notice of the request for proposals in the same manner as provided in R19-3-509(b).
- ~~D.~~ The Lottery shall open proposals publicly at the time and place designated in the request for proposals. The name of each offeror and other relevant information specified in this Article shall be publicly read and recorded in the contract file. All other information contained in the proposals shall be confidential to avoid disclosure of contents prejudicial to competing

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offerors during the process of evaluation and contract negotiation. The proposals shall be open for public inspection after contract award. To the extent a bidder designates and the Director concurs, a trade secret or other proprietary data contained in bid documents shall remain confidential in accordance with this Article.

- E. The Lottery shall include in a request for proposals information regarding the relative importance of price and other evaluation factors. Specific numerical weighing is not required.
- F. The Lottery may specify in a request for proposals that discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award to ensure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals. Revisions of proposals may be permitted after submission and before award for the purpose of obtaining best and final offers. The Lottery shall not disclose any information derived from proposals submitted by competing offerors in conducting discussions.
- G. The Lottery shall award 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 in the request for proposals. The Lottery shall not use other factors or criteria in the evaluation. The amount of 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 written determination that a proposal is the most advantageous to the Lottery shall be retained in the contract file.

The procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be not less than seven days before the offer due date and time, unless the procurement officer makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre-offer conference are not amendments to the solicitation.

R19-3-511. Small Business Set-aside Solicitation Amendment

- A. Except as provided under subsection (D), the Lottery shall restrict purchases estimated to cost less than \$10,000 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 a purchase estimated to cost less than \$10,000, the Lottery shall include in it a notice that only small businesses as defined in R19-2-501(31) may respond. If a request for quotations requires written quotes, a bidder shall self-certify in its quote that it is a small business. If verbal quotes are accepted in response to a written request for quotations or if a 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. The Lottery shall presume that a bidder is a small business if it is 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 this confirmation.
- C. If a request for quotations is not issued, the Lottery shall verbally request confirmation that a bidder 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 defined in A.R.S. § 41-2536;
 - 2. Emergency procurements as defined in A.R.S. § 41-2537;
 - 3. Purchases not expected to exceed \$1,000;
 - 4. Purchases that have been unsuccessfully completed under subsections (B) and (C), including failure to obtain fair and reasonable prices.
- A. The procurement officer shall issue a solicitation amendment to do any or all of the following:
 - 1. Make changes in the solicitation;
 - 2. Correct defects or ambiguities;
 - 3. Provide additional information or instructions; or
 - 4. Extend the offer due date and time if the procurement officer determines that an extension is in the best interest of the Lottery.
- B. If a solicitation is changed by a solicitation amendment, the procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.
- C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

R19-3-512. Procurements Not Exceeding an Aggregate Amount of \$25,000 Modification or Withdrawal of Offer Before Offer Due Date and Time

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

R19-3-513. ~~Procurements Not Exceeding an Aggregate Amount of \$10,000~~ Cancellation of a Solicitation Before Offer Due Date and Time

If a procurement 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 exempt the procurement from the provisions of R19-3-509 and R19-3-510. The Lottery shall not artificially divide or fragment procurement requirements to constitute a purchase under this rule or to circumvent the source selection procedures required by R19-3-509 and R19-3-510.

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

R19-3-514. ~~Sole Source Procurement~~ Receipt, Opening, and Recording of Offers

If the Director determines in writing that there is only one source for a required material or service item, the Lottery may award without competition 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. The Lottery shall avoid sole source procurement except when no reasonable alternative source exists. The Director shall prepare a written statement of the basis for the sole source determination and place the statement in the contract file.

- A. The procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. The Lottery may open an offer to identify the offeror. If this occurs, the procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The procurement officer shall secure the offer and retain it for public opening.
- C. The procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and

time. The procurement officer shall announce the name of the offeror; the amount of each offer; and any other relevant information as determined by the procurement officer. The procurement officer shall record the name of each offeror, and the amount of each offer. The reader and the witness shall sign the record of offers and place it in the procurement file. The procurement officer shall make the record of offers available for public viewing.

- D.** Except for the information identified in subsection (C), the procurement officer shall ensure that information contained in the offer remains confidential until the contract becomes effective and binding and is shown only to those persons assisting in the evaluation process and the Lottery Commissioners after award and before the contract becomes effective and binding.

R19-3-515. ~~Emergency Procurements~~ Late Offers, Modifications, Withdrawals

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

- A.** If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, the procurement officer shall determine the offer, modification, or withdrawal as late.
- B.** The procurement officer shall reject a late offer, modification, or withdrawal unless:
1. The document is received before the contract award at the location designated in the solicitation; and
 2. The document would have been received by the offer due date and time, but for the action or inaction of Lottery personnel.
- C.** Upon receiving a late offer, modification, or withdrawal, the procurement officer shall:
1. If the document is hand delivered, refuse to accept delivery; or
 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D.** The procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

R19-3-516. ~~Cancellation of Invitation for Bids or Requests for Proposals~~ Cancellation of Solicitation After Receipt of Offers and Before Award

~~The Lottery shall cancel or reject an invitation for bids, a request for proposals, or other solicitation if it is in the best interests of the Lottery. A written statement of the reason for the cancellation or rejection shall be placed in the contract file.~~

- A.** Based on the best interest of the Lottery, the procurement officer may cancel a solicitation after offer due date and time. The procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
- B.** The procurement officer shall notify offerors of the cancellation in writing.
- C.** The procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the Lottery intends to issue another solicitation within six months after cancellation of the procurement, the procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the procurement officer shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential pursuant to R19-3-503.
- D.** In the event of cancellation, the procurement officer shall promptly return any bid security provided by an offeror.

R19-3-517. ~~Responsibility of Bidders and Offerors~~ One Offer Received

- A.** ~~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 Director shall prepare a written statement of the basis for the determination and 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 supply promptly information requested regarding responsibility shall be grounds for a determination of nonresponsibility. A bidder or offeror shall not construe a determination of nonresponsibility as a violation of the bidder's or offeror's rights.~~
- B.** ~~The Director shall consider the following factors in determining whether a bidder or offeror is responsible:~~
- ~~1. The bidder's or offeror's financial, physical, personnel, and other resources, including subcontracts;~~
 - ~~2. The bidder's or offeror's record of performance and integrity;~~
 - ~~3. The bidder's or offeror's legal qualifications to contract with the Lottery;~~
 - ~~4. The bidder's or offeror's responsiveness to requests for information concerning its responsibility; and~~
 - ~~5. The bidder's or offeror's compliance with specific responsibility criteria in the solicitation.~~
- C.** ~~The Director shall not disclose information furnished by a bidder or offeror under this Section without prior written consent by the bidder or offeror except to law enforcement agencies.~~

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

1. Award the contract to the offeror and prepare a written determination that:

- a. The price submitted is fair and reasonable under R19-3-547;
- b. The offer is responsive; and
- c. The offeror is responsible; or
2. Reject the offer and:
 - a. Resolicit for new offers;
 - b. Cancel the procurement; or
 - c. Use a different source selection method authorized under these rules.

R19-3-518. ~~Prequalification of Contractors Offer Mistakes Discovered After Offer Opening and Before Award~~

- ~~A. A prospective contractor may be prequalified for particular types of materials, or services. A prequalified contractor shall provide the Director with information annually on any material change affecting the basis of prequalification. The Lottery shall include prequalified contractors on solicitation mailing lists of potential contractors.~~
- ~~B. A prospective contractor need not be prequalified to be awarded a contract. Prequalification does not represent a determination of responsibility.~~
- A. If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, the procurement officer shall contact the offeror for written confirmation of the offer. The procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include all of the following in a written response:
 - a. Explanation of the mistake and any other relevant information;
 - b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- C. The procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The procurement officer shall not permit a correction that is prejudicial to the Lottery or fair competition.
- D. The procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E. The procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the Lottery.
- F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

R19-3-519. ~~Bid and Contract Security Extension of Offer Acceptance Period~~

~~The Director may require, in accordance with this Article, that a prospective contractor submit security to guarantee faithful bid and contract performance. To 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 in the invitation for bids or request for proposals.~~

- A. To extend the offer acceptance period, the procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.
- B. To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

R19-3-520. ~~Bid and Performance Bonds for Material or Service Contracts~~ Determination of Not Susceptible for Award

- ~~A. If the Director deems it advisable to protect the interests of the Lottery, the Director shall require bid and performance bonds or other security for material or service contracts. Bond or other security requirements shall be stated in the solicitation. The Lottery shall not use bid or performance bonds 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 to the bidder or offeror.~~
- A. The procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
 2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or

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3. The offer is not within the competitive range in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is in the competitive range, the offer should be included.

B. The procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award unless the procurement officer determines notification to the offeror would compromise the Lottery's ability to negotiate with other offerors.

R19-3-521. Cost or Pricing Data Bid Evaluation

A. ~~The Director shall require a bidder or offeror to submit current cost or pricing data regarding a potential contract award if an analysis of the proposed price is essential to determine that the price is reasonable and fair. A bidder or offeror shall, except as provided in subsection (C), submit current cost or pricing data and certify that, to the best of the bidder's or offeror's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current as of a mutually determined specified date before:~~

1. ~~The pricing of a contract awarded by competitive sealed proposals or 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 a change order or contract modification that is expected to exceed an amount established by this Article.~~

B. ~~A contract, change order, or contract modification for which a certification of cost or pricing data is required shall contain a provision that the price to the Lottery be adjusted to exclude any significant amounts by which the Lottery finds that the price is increased because the contractor furnished cost or pricing data were inaccurate, incomplete, or not current as of the date agreed on between the parties. The Lottery may include profit or fee in this adjustment.~~

C. ~~The requirements of this 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 price is set by law or rule; or~~
4. ~~The Director determines in writing that it is in the best interests of the Lottery to waive the requirements of this Section and states in writing the reason for the waiver.~~

D. ~~The Lottery shall execute a change order exceeding 5% of the contract amount or \$10,000, whichever is greater, only if the Director determines in writing that the change order is in the best interests of the Lottery.~~

A. The procurement officer shall evaluate offers to determine which offer provides the lowest cost to the Lottery in accordance with any objectively measurable factors set forth in the solicitation. Examples of such factors include, but are not limited to, transportation cost, energy cost, ownership cost, and any other identifiable cost or life cycle cost formula. The factors need not be precise predictors of actual future costs, but to the extent possible the factors shall be reasonable estimates based upon information the procurement officer has available concerning future use.

B. The procurement officer shall consider life cycle costs and application benefits when evaluating offers for the procurement of material or services information systems and telecommunication systems.

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

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

R19-3-522. Types of Contracts Clarification of Proposal Offers

A. ~~Except as provided in subsections (B) and (C), the Lottery may use any type of contract that promotes the best interests of the Lottery.~~

B. ~~The Lottery shall not use a cost plus a percentage of cost contract.~~

C. ~~The Lottery shall use a cost reimbursement contract only if the Director makes a written determination that this type of contract is the least costly to the Lottery.~~

A. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.

B. The procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.

C. The procurement officer shall retain any clarifications in the procurement file.

R19-3-523. ~~Approval of Accounting System~~ Proposal Negotiations with Responsible Offerors and Revisions of Offers

~~The Lottery shall not use any contract type except a firm fixed price contract unless the Director makes a written determination that the proposed contractor's accounting system is adequate to allocate costs.~~

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

R19-3-524. ~~Multi-term Contracts~~ Final Proposal Revisions

- ~~A. Unless otherwise provided by law, the Lottery may enter a contract for materials or services for as many as five years, as deemed by the Director to be in the best 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 first fiscal period of contracting. The Lottery may enter a contract for a period of time exceeding five 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. If monies are not available to support payment and performance obligations in a subsequent fiscal period, the Lottery shall cancel the contract and reimburse the contractor for only the reasonable value of nonrecurring costs incurred that are not amortized in the price of the materials or services delivered under the contract or that are not otherwise recoverable.
- A. The procurement officer shall request written final proposal revisions from any offeror with whom negotiations have been conducted, unless the offeror has been determined not susceptible for award under R19-3-520 or non-responsible under R19-3-526. The procurement officer shall include in the written request:
 - 1. The date, time, and place for submission of final proposal revisions; and
 - 2. A statement that if offerors do not submit a written notice of withdrawal or a written final proposal revision, their immediate previous written proposal revision will be accepted as their final proposal revision.
- B. The procurement officer shall request written final proposal revisions only once, unless the procurement officer makes a written determination that it is advantageous to the Lottery to conduct further negotiations or change the Lottery's requirements.
- C. If an apparent mistake, relevant to the award determination, is discovered after opening of final proposal revisions, the procurement officer shall contact the offeror for written confirmation. The procurement officer shall designate a time-frame within which the offeror shall either:
 - 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 - 2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information;
 - b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- D. An offeror who discovers a mistake in their final proposal revision may request withdrawal or correction in writing, and shall include the following in the written request:
 - 1. Explanation of the mistake and any other relevant information;
 - 2. A request for correction including the corrected offer or a request for withdrawal; and
 - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

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

R19-3-525. Right to Inspect Plant Evaluation of Proposal Offers

A contractor and any subcontractor shall make available for inspection by the Lottery, at reasonable times, any part of the contractor's or subcontractor's plant or place of business that is related to the performance of any contract awarded or to be awarded by the Director.

- A. The procurement officer shall evaluate offers and final proposal revisions based on the evaluation criteria contained in the request for proposals. The procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.
- B. The procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the procurement officer. The procurement officer may:
 1. Accept or reject the findings of the evaluation committee;
 2. Request additional information from the evaluation committee; or
 3. Replace the evaluation committee.
- C. The procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

R19-3-526. Right to Audit Records Responsibility Determinations

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

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

R19-3-527. Reporting of Anticompetitive Practices Bid Contract Award

A person who suspects collusion or other anticompetitive practice by a bidder or offeror shall transmit notice of the relevant facts to the Director and the Attorney General. A law enforcement agency conducting an investigation into an anticompetitive practice is not required to notify to the Director.

- A. The procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.
- B. The procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.
- C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D. After an award becomes effective and binding, the procurement officer shall return any bid security provided by the offeror.

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E. Within 10 days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

R19-3-528. ~~Anticompetitive Practices among Bidders or Offerors~~ Proposal Contract Award

~~A bidder or offeror shall certify that the bid or offer submitted does not involve collusion or other anticompetitive practice.~~

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

B. Before awarding any cost reimbursement contract, the procurement officer shall determine in writing that:

1. The offeror's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated, and
2. It is adequate to allocate costs under R19-3-547 through R19-3-550.

C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

D. If the procurement officer makes a written determination that it is in the best interest of the Lottery that the award not be made public until reviewed by the Lottery Commission, the Director can authorize a meeting of the Lottery Commission to be held for consideration of the award.

1. Notice of the meeting will be made in compliance with Open Meeting Law with a notice of an executive session to receive information concerning the award and the procurement officer's evaluation of the offers.
2. No action will be taken by the Lottery Commission in the executive session.
3. In open meeting the Lottery Commission may vote to approve or reject the award. The Lottery Commission may also direct that it will reject the award unless further negotiations are taken regarding specified issues. If further negotiations are directed, the procurement officer will withhold the recommended award from public inspection.

E. The procurement officer shall notify all offerors of an award that has become effective and binding.

F. After a contract award becomes effective and binding, the procurement officer shall return any offer security provided by the offeror.

G. Within 10 days after contract award the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

R19-3-529. Retention of Procurement Records Mistakes Discovered After Bid Award

The Lottery shall retain and dispose of all procurement records in accordance with records retention guidelines and schedules approved by the Department of Library, Archives, and Public Records.

A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:

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

B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:

1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
2. Cancel all or part of the award; or
3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, based on the considerations of fair competition and the best interest of the Lottery.

R19-3-530. Record of Procurement Actions Mistakes Discovered After Proposal Award

The Director shall maintain a record of all contracts in excess of \$10,000 made under R19-3-514 or R19-3-515 for a minimum of five 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.

A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in their written request:

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

B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:

1. Allow correction of the mistake;
2. Cancel all or part of the award; or

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3. Deny correction or withdrawal.

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

R19-3-531. ~~Content of Specifications~~ Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535

A. A specification may provide alternative descriptions of material or service items if two or more design, functional, or performance criteria will satisfactorily meet the Lottery's requirements.

B. To the extent practicable, the Lottery shall not include any solicitation or contract term or condition in a specification.

C. 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.

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, the procurement officer shall issue a request for quotation under R19-3-533 unless any of the following apply:

1. The purchase can be made from a state or agency contract;

2. The purchase can be made from a set-aside organization as established in A.R.S. § 41-2636;

3. The purchase is not expected to exceed \$5,000.00;

4. The purchase is made as a sole-source procurement;

5. The procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.

R19-3-532. ~~Types of Specifications~~ Solicitation – Request for Quotation

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.

A. A request for quotation shall be issued for purchases estimated to exceed \$5,000 but less than that specified in A.R.S. § 41-2535. The procurement officer shall include the following in the solicitation:

1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;

2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;

3. The minimum information that the offer shall contain;

4. Any evaluation factors;

5. Whether negotiations may be held;

6. Any contract options including renewal or extension;

7. The uniform terms and conditions by text or reference; and

8. Any other terms, conditions, or instructions specific to the procurement.

B. The request for quotation shall include a statement that only a small business, as defined in R19-3-501, shall be awarded a contract, unless any of the following apply:

1. The purchase has been unsuccessfully competed under R19-3-533, including failure to obtain fair and reasonable prices; or

2. The procurement officer has made a written determination that restricting the procurement to small business is not practical under the circumstances.

R19-3-533. ~~Confidentiality~~ Request for Quotation Issuance

The Lottery shall make available for public inspection every specification, and written determination or other document generated or used to develop the specification, unless withholding this information is permitted by law and required by the Director.

The procurement officer shall issue the request for quotation by one of these methods:

1. Post the request for quotation on the state procurement office's centralized electronic system indicating the date that offers are due. The request for quotation shall be posted for a reasonable time as determined by the procurement officer based on the needs of the Lottery.
2. Distribute the request for quotation to a minimum of three small businesses. The procurement officer shall rotate suppliers invited to submit quotations and shall invite at least one small minority- or small women-owned business enterprise to submit a quote. If the procurement officer is unable to locate a small minority- or small women-owned business enterprise, the procurement officer shall document in the procurement file.
3. The procurement officer may cancel the request for quotation at any time by making a written determination that cancellation is advantageous to the Lottery.

R19-3-534. ~~Maximum Practicable Competition~~ Quotation Contract Award

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.~~

- A.** If only one responsive offer is received, the procurement officer shall explain in writing whether award of the contract is advantageous to the Lottery and place the determination in the procurement file.
- B.** The procurement officer shall award a contract to the small business determined to be most advantageous to the Lottery in accordance with any evaluation factors identified in the request for quotation.
- C.** The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D.** The procurement officer shall make the procurement file available to the public on the date the contract award becomes final and binding.

R19-3-535. Requirements of Nonrestrictiveness Sole Source Procurements

A. ~~Nonexclusive specifications:~~

1. ~~To the extent practicable and unless otherwise permitted by this Article, the Lottery shall describe its requirements in a specification in a manner that does not unnecessarily exclude a material or service.~~
2. ~~The Lottery shall not use proprietary specifications 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 a material's performance, traditional purchasing practices, and inconvenience of drawing specifications does not justify the use of a proprietary specification.~~

B. ~~The Lottery shall use accepted commercial specifications and procure standard commercial materials.~~

A. For the purposes of this Section, the term "sole-source procurement" means a material or service procured without competition when:

1. There is only a single source for the material or service; or
2. No reasonable alternative source exists.

B. The procurement officer shall make a written determination that includes the following information:

1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists;
2. The name of the proposed supplier;
3. The duration and estimated total dollar value of the proposed procurement;
4. Documentation that the price submitted is fair and reasonable pursuant to R19-3-547; and
5. A description of efforts made to seek other sources.

C. The procurement officer shall post the request on the Lottery web site and the state procurement office web site and invite comments on the sole-source request for five working days. Following this period, the procurement officer shall either:

1. Issue a written determination with any conditions or restrictions;
2. Retract the determination if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.

D. If the sole-source procurement is determined, the procurement officer shall negotiate a contract advantageous to the Lottery.

E. The procurement officer shall notify the Director and the Lottery Commission of a contract award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to the sole source.

E. The procurement officer shall keep a record of all sole-source procurements.

R19-3-536. Preparation of Specifications by Persons Other than State Personnel Emergency Procurements

~~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 this Article apply to all specifications or plans prepared by persons other than state personnel.

- A. For the purposes of this Section, the term “emergency” means any condition creating an immediate and serious need for materials, services, or construction in which the Lottery’s best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of the Lottery, the preservation or protection of property, or the health or safety of a person.
- B. This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.
- C. A Lottery employee with the approval of his supervisor or the Director may proceed with an emergency procurement without approval from the procurement officer if the emergency necessitates immediate response and it is impracticable to contact the procurement officer. The supervisor or Director shall submit a written confirmation of the emergency procurement to the procurement officer within five working days of the emergency.
- D. An emergency procurement shall be limited to such actions necessary to address the emergency.
- E. An emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the Lottery.
- F. The procurement officer shall keep a record of all emergency procurements.

R19-3-537. Conflicts of Interest Competition Impracticable Procurements

- ~~A. A person preparing or assisting in the preparation of a specification, plan, or scope of work shall not receive any direct or indirect benefit from the use of the specification, plan, or scope of work.~~
- ~~B. The Director shall approve or disapprove all specifications.~~
- A. For the purposes of this Section, “competition impracticable” means a procurement requirement exists which makes compliance with A.R.S. § 5-509 and these rules impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R19-3-536.
- B. The procurement officer shall make a written determination for approval containing the following:
 - 1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. § 5-509 and these rules impracticable, unnecessary, or contrary to the public interest;
 - 2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
 - 3. An explanation of why the proposed procurement process is advantageous to the Lottery; and
 - 4. The scope, duration, and estimated total dollar value of the procurement need.
- C. The procurement officer shall keep a record of all competition impracticable procurements.

R19-3-538. Filing of a Protest Request for Information

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

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

- 1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
- 2. To the extent allowed by law, information contained in a response to a request for information may be considered confidential until the procurement process is concluded or two years, whichever occurs first.
- 3. There is no required format to be used for requests for information.

R19-3-539. Time for Filing Protest Demonstration Projects

- ~~A. Protests concerning improprieties in a solicitation:~~
 - ~~1. A person who protests an alleged impropriety in a solicitation that is apparent before the bid opening shall file the protest before bid opening. A person who protests an alleged impropriety in a solicitation that is apparent before the closing date for receipt of initial proposals shall file the protest before the closing date for receipt of initial proposals.~~
 - ~~2. A person who protests an alleged impropriety in a request for proposals regarding a procurement that does not exist in the initial solicitation but is subsequently incorporated into the solicitation shall file the protest by the next closing date following the incorporation.~~
- ~~B. A person whose protest is not covered in subsection (A), shall file the protest within 10 days after the person knows or should have known the basis of the protest, whichever is earlier.~~
- ~~C. When a protest is filed, the Procurement Officer shall immediately give written notice of the protest to the successful con-~~

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tractor if an award has been made or to all interested parties if no award has been made.

- A. The procurement officer may award a contract for a demonstration project. The written determination shall contain the following:
 - 1. Name of the contractor;
 - 2. Description of the project, including unique and innovative features of the project;
 - 3. Statement and explanation that the project is in best interest of the Lottery;
 - 4. Duration of the project; and
 - 5. Proposed contract terms and conditions.
- B. Demonstration projects shall be provided by the contractor at no cost and the Lottery shall not be obligated to purchase or lease the services or materials from the contractor.
- C. The procurement officer may purchase or lease from the demonstration contractor within 12 months after the demonstration project begins or within 12 months after the demonstration project ends by making a written determination that contains the following:
 - 1. Name of the contractor;
 - 2. Description of the project, including unique and innovative features of the project;
 - 3. Statement and explanation that lease or purchase is in best interest of the Lottery;
 - 4. Cost to the Lottery;
 - 5. Duration of the proposed contract; and
 - 6. Proposed contract terms and conditions.
- D. The term of the contract resulting from a demonstration project shall not exceed two years.

R19-3-540. Stay of Procurement During Protest General Services Administration Contracts

~~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.~~

- A. The procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:
 - 1. Use of the GSA contract or schedule is cost effective and in the best interest of the Lottery;
 - 2. Price is equal to or less than the contractor's current GSA price;
 - 3. Price is fair and reasonable;
 - 4. Contractor is willing to offer GSA pricing and terms to the Lottery;
 - 5. Comparable products or services are not available under a state or agency contract;
 - 6. Comparable products or services are not restricted under a set-aside contract; and
 - 7. Contractor accepts required Lottery contract terms and conditions.
- B. The procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the Lottery. The determination shall contain the following:
 - 1. Name of the contractor;
 - 2. GSA contract or schedule number;
 - 3. Procurement description;
 - 4. Analysis of price, quality, and other relevant factors; and
 - 5. Statement that the price is fair and reasonable.

R19-3-541. Confidential Information Standard Terms and Conditions Contract Clauses

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

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

R19-3-542. Decision by the Procurement Officer Assignment of Rights and Duties

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

A contractor shall not assign or transfer the rights or duties of a Lottery contract without the written consent of the Director.

R19-3-543. Remedies Change of Name

- A.** If the 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 Procurement Officer shall implement an appropriate remedy.
- B.** In determining an appropriate remedy, the 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 or more of the following:
 - 1. Decline to exercise an option to renew under the contract;
 - 2. Terminate the contract;
 - 3. Amend the solicitation;
 - 4. Issue a new solicitation;
 - 5. Award a contract consistent with A.R.S. § 5-509 and this Article; or
 - 6. Implement other relief determined necessary to ensure compliance with A.R.S. § 5-509 and this Article.

If a contractor requests to change the name in which it holds a Lottery contract, the procurement officer may, upon receipt of a document indicating name change and any other information requested by the procurement officer to be in the best interest of the Lottery concerning the name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

R19-3-544. Appeals to Protest Decisions to the Director Contract Change Orders and Amendments

- 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 five 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.
- A.** The procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.
- B.** Any contract change order or amendment not covered under subsection (A) that exceeds \$100,000 may be executed only if the procurement officer determines in writing that the change order or amendment is advantageous to the Lottery and the price is determined fair and reasonable pursuant to R19-3-547.
- C.** The procurement officer may, in situations in which time or economic consideration preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements in accord with the consideration in A.R.S. § 41-2537.

R19-3-545. Stay of Procurement During Appeal Multi-term Contracts

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.

- A.** Unless otherwise provided by law, a contract may be entered into for a period of time up to five years, if the term of the contract and conditions of renewal or extension, if any are included in the solicitation and monies are available for the first fiscal period at the time of contracting.
- B.** A contract can be entered into for a period exceeding five years, if the procurement officer makes a written determination that such a contract would be advantageous to the Lottery. The written determination shall include:
 - 1. The initial and renewal option periods for the contract;
 - 2. Documentation that the estimated requirements are reasonable and continuing;
 - 3. Documentation that such a contract will serve the best interests of the Lottery by encouraging effective competition

or otherwise promoting economies in Lottery procurement.

- C.** The procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

R19-3-546. Dismissal Before Hearing Terms and Conditions

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 untimely under R19-3-544(A).

- A.** The procurement officer shall use the uniform terms and conditions published by the state procurement administrator for state contracts.
- B.** The procurement officer may make changes to uniform terms and conditions by making a written determination that it is in the best interest of the Lottery and does not conflict with any statutory requirements.

R19-3-547. Commission's Rejection of Award Determination of Fair and Reasonable Price

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, until a final decision on any appeal has been made by the Director and the award communicated to the Commission.

- A.** For contracts or contract modifications that exceed \$100,000, the procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
1. The contract or modification is based on adequate price competition;
 2. Price is supported by an established catalog or market prices;
 3. Price is set by law or rule; or
 4. Price is supported by relevant, historical price data.
- B.** The procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
1. The procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A); or
 2. The procurement officer determines in writing that it is in the best interest of the Lottery regardless of the amount of the contract or contract modification.

R19-3-548. Contract Claims Submission and Certification of Cost or Pricing Data

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

R19-3-549. Resolution of Contract Claims Refusal to Submit Cost or Pricing Data

- A.** If a contract claim cannot be resolved by agreement of the parties, the Procurement Officer shall, upon a written request by the contractor, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the Procurement Officer shall review the facts pertinent to the contract claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B.** The 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 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 Procurement Officer's decision, with supporting rationale; and
 5. A paragraph substantially as follows: "This is the final decision of the Procurement Officer. This decision may not be appealed to the Commission".
- C.** The time limit for decisions under subsection (A) may be extended for good cause for a reasonable time not to exceed 30 days. The Procurement Officer shall notify the contractor in writing that the time for issuance of a decision has been extended and the date by which a decision will be issued.
- D.** If the Procurement Officer fails to issue a decision within 60 days after a request is filed or within the time prescribed under subsection (C), the contractor may proceed as if the Procurement Officer had issued an adverse decision.
- A.** If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the procurement officer may reject the offer.

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- B.** If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the procurement officer may:
1. Reject the contract modification; or
 2. Set the amount of the contract modification subject to the contractor's rights under A.R.S. Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes.

R19-3-550. Appeals of Contract Claim Decisions to the Director Defective Cost or Pricing Data

- A.** A person who appeals a decision of the Procurement Officer on a contract claim shall file the appeal with the Director within five 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 claim 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.
- A.** The procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.
- B.** The procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.
- C.** The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under R19-3-551 through R19-3-559. The price, as adjusted by the procurement officer, shall remain in effect until any claim is settled or resolved under A.R.S. Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes.

R19-3-551. Debarment and Suspension of Contractors Protest of Solicitations and Contract Awards

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

- A.** Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
- B.** The interested party shall file the protest in writing with the procurement officer and shall include the following information:
1. The name, address and telephone number of the interested party;
 2. The signature of the interested party or the interested party's 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.
- C.** If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
- D.** In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the procurement officer makes the procurement file available for public inspection.
- E.** The interested party may submit a written request to the procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the Lottery that resulted in the interested party being unable to submit the protest within the 10 days. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted set forth a new date for submission of the filing.
- F.** If the interested party shows good cause, the procurement officer may consider a protest that is not timely filed.
- G.** The procurement officer shall immediately give notice of a protest to all offerors.

R19-3-552. Exclusive Remedy Stay of Procurements During the Protest

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

- A.** If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the procurement officer shall make a written determination to either:
1. Proceed with the award or contract performance; or
 2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Lottery.
- B.** The procurement officer shall provide the interested party and other interested parties with a copy of the written determination.

R19-3-553. Resolution of Solicitation and Contract Award Protests

- A. The procurement officer has the authority to resolve a protest.
- B. The procurement officer shall issue a written decision within 14 days after a protest has been filed under R19-3-551. The decision of the procurement officer shall contain the factual and legal basis for the decision and a statement that the decision of the Lottery may be appealed as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes within 30 days from receipt of the decision.
- C. The procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt and provide a copy to the Director.
- D. The time limit for decisions under subsection (B) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- E. If the procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the procurement officer had issued an adverse decision.

R19-3-554. Remedies by the Procurement Officer

- A. If the procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the procurement officer shall implement an appropriate remedy.
- B. In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:
 - 1. The seriousness of the procurement deficiency;
 - 2. The degree of prejudice to other interested parties or to the integrity of the procurement system;
 - 3. The good faith of the parties;
 - 4. The extent of performance;
 - 5. The costs to the Lottery;
 - 6. The urgency of the procurement;
 - 7. The impact on the agency's mission; and
 - 8. Other relevant issues.
- C. The procurement officer may implement any of the following appropriate remedies:
 - 1. Decline to exercise an option to renew under the contract;
 - 2. Terminate the contract;
 - 3. Amend the solicitation;
 - 4. Issue a new solicitation;
 - 5. Award a contract consistent with procurement statutes and regulations; or
 - 6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

R19-3-555. Agency Report

- A. The procurement officer shall file a complete report on the appeal within 14 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
 - 1. The appeal;
 - 2. The offer submitted by the interested party;
 - 3. The offer of the firm that is being considered for award;
 - 4. The solicitation, including the specifications or portions relevant to the appeal;
 - 5. The abstract of offers or relevant portions;
 - 6. Any other documents that are relevant to the protest; and
 - 7. A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.
- B. The time limit for filing the agency report under subsection (A) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of the agency report has been extended and the date by which a decision shall be issued.
- C. The interested party shall file comments on the agency report with the procurement officer within 10 days after receipt of the report. The interested party shall provide copies of the comments to the other interested parties.
- D. The interested party may submit a written request to the Director for an extension of the period for submission of comments, identifying the good reasons for the extension. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments.

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R19-3-556. Controversies Involving Contract Claims Against the Lottery

- A.** A claimant shall file a contract claim with the procurement officer within 180 days after the claim arises. The claim shall include the following:
1. The name, address, and telephone number of the claimant;
 2. The signature of the claimant or claimant's representative;
 3. Identification of the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
 5. The form and dollar amount of the relief requested.
- B.** The procurement officer shall have the authority to settle and resolve contract claims.

R19-3-557. Procurement Officer's Decision

- A.** If a claim cannot be resolved under R19-3-556, the procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B.** The procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the Director. The decision shall include:
1. A description of the claim;
 2. A reference to the pertinent contract provision;
 3. A statement of the factual areas of agreement or disagreement;
 4. A statement of the procurement officer's decision, with supporting rationale;
 5. A paragraph which substantially states: "This is the final decision of the procurement officer. This decision may be appealed as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes within 30 days from receipt of the decision. If you appeal, you must file a written notice of appeal containing the information required in R19-3-559(B) with the procurement officer within 30 days from the date you receive this decision."

R19-3-558. Issuance of a Timely Decision

If the procurement officer fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the procurement officer had issued an adverse decision.

R19-3-559. Appeals and Reports to the Director

- A.** The claimant may appeal the final decision of the procurement officer to the Director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the Director and the procurement officer.
- B.** The claimant shall file the appeal in writing and shall include the following:
1. A copy of the decision of the procurement officer;
 2. A statement of the factual areas of agreement or disagreement; and
 3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C.** The procurement officer shall file a complete report on the appeal with the Director within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.
- D.** The Director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

R19-3-560. Controversies Involving Lottery Claims Against the Contractor

If the procurement officer is unable to resolve, by mutual agreement, a claim asserted by the Lottery against a contractor, the procurement officer shall seek resolution under A.R.S. § 41-1092.07. The procurement officer shall furnish a copy of the claim to the Director.

R19-3-561. On-Line Solicitation Process

The procurement officer may make a written determination that an on-line bidding as defined in A.R.S. § 41-2671 is most advantageous to the Lottery. The written determination shall include the following information:

1. An estimate of the number of prospective offerors;
2. A description of the proposed on-line procurement method to be utilized and an explanation of how this method will foster competition;
3. An explanation of why the proposed procurement method is advantageous to the Lottery; and
4. The scope, duration, and estimated total dollar value of the procurement need.

R19-3-562. Guidance

If a procedure is not provided by these rules, the procurement officer may issue a written determination using for guidance A.R.S. § 41-2501 through § 41-2591 or A.A.C. R2-7-101 through R2-7-1301.