

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 2. ADMINISTRATION

CHAPTER 7. DEPARTMENT OF ADMINISTRATION FINANCE DIVISION, PURCHASING OFFICE

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2201.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 8, 2012.

[R12-163]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R2-7-101 | Amend |
| R2-7-B309 | Amend |
| R2-7-C309 | Amend |
| R2-7-C311 | Amend |
| R2-7-C314 | Amend |
| R2-7-C315 | Amend |
| R2-7-C316 | Amend |
| R2-7-D303 | Amend |
| R2-7-E301 | Amend |
| R2-7-E303 | Amend |
| R2-7-F307 | Amend |
| R2-7-G301 | Amend |
| R2-7-404 | New Section |
| R2-7-501 | Amend |
| R2-7-503 | Amend |
| R2-7-504 | Amend |
| R2-7-505 | Amend |
| R2-7-511 | Amend |
| R2-7-607 | New Section |
| R2-7-608 | New Section |
| R2-7-A902 | Amend |
| R2-7-A908 | Amend |
| Article 13 | Repeal |
| R2-7-1301 | Repeal |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statutes: A.R.S. § 41-2511(A)
Implementing statutes: A.R.S. §§ 41-2511, 41-2501 through 41-2504, 41-2512 through 41-2516, 41-2531 through 41-2559, 41-2561 through 41-2568, 41-2571 through 41-2579, 41-2580, 41-2585 through 41-2586, 41-2591, 41-2601 through 41-2607, 41-2611 through 41-2617, 41-2631 through 41-2637, 41-2661 and 41-2662, and 41-2671 through 41-2673
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 18 A.A.R. 1502, June 29, 2012

Notices of Proposed Rulemaking

4. The agency's contact person who can answer questions about the rulemaking:

Name: Jean Clark, State Procurement Administrator
Address: Department of Administration – State Procurement Office
100 N. 15th Ave., Suite 201
Phoenix, AZ 85007
Telephone: (602) 542-9136
Fax: (602) 542-5508
E-mail: Jean.Clark@azdoa.gov

or

Name: Rob Smook, ADOA Rules Administrator
Address: Department of Administration – Fleet Management Office
1501 W. Madison St.
Phoenix, AZ 85007
Telephone: (602) 542-6161
Fax: (602) 542-3125
E-mail: Robert.Smook@azdoa.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The purpose of this rulemaking is to address issues identified in the previous five-year review report approved by the Governor's Regulatory Review Council in 2010. Other changes may be made to improve processes. Additionally, the rulemaking will update the rules and bring them into conformance with current practice. Subject matter of these rules is the procurement and management of all materials, services and construction for the state of Arizona. The statutes and the rules are based on the American Bar Association Model Procurement Code and are commonly referred to as the "Arizona Procurement Code."

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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 rulemaking is necessary to promote a statewide interest if the rulemaking 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:
Identification of the Proposed Rule Package:

The proposed rulemaking governs the procurement and management of all materials, services, and construction for the state of Arizona. The rules are based on the American Bar Association's Model Procurement Code and known as the "Arizona Procurement Code."

Identification of the Impacted Parties:

The parties affected by this rulemaking include: state government officials and managers, state government procurement employees, suppliers including small businesses, minority and women owned businesses, non-profit organizations that provide services to state government, associations that represent various business groups, attorneys, local government units including cities, counties, and school districts.

Benefits / Costs of these rule changes:

The benefits of this rulemaking are greater efficiency in public procurement, reduced operating cost of public procurement, increased opportunities for small, minority and women-owned businesses, improved understanding and ease of use of rules for government agencies and suppliers and more open access to procurement opportunities and information.

Probable Impact on Small Business:

The impact on small businesses should be positive. Small businesses will benefit from more open access to contracting opportunities with the state. In addition, the proposed changes in this rulemaking should provide a better understanding of the rules and their function to small business than do the rules currently in place.

Probable Effects on State Revenue:

There should be no immediate measurable impact on state revenues or expenses. The long-term effect should be a reduction in costs resulting from greater efficiency in the procurement program and the ability to negotiate lower costs for the state.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Jean Clark, State Procurement Administrator
Address: Department of Administration – State Procurement Office
100 N. 15th Ave., Suite 201
Phoenix, AZ 85007
Telephone: (602) 542-9136
Fax: (602) 542-5508
E-mail: Jean.Clark@azdoa.gov

or

Name: Rob Smook, ADOA Rules Administrator
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Fax: (602) 542-3125
E-mail: Robert.Smook@azdoa.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber 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 received at the address listed in item 9 for 30 days after the Notice of Proposed Rulemaking is published in the *Register*. An oral proceeding will be scheduled if one is requested, otherwise, the record will be closed at the end of the 30-day period after publication in the *Register*. Should a request for an oral proceeding be received, notice of that proceeding will be published in a future edition of the *Register*.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 7. DEPARTMENT OF ADMINISTRATION

~~FINANCE DIVISION, PURCHASING OFFICE~~ STATE PROCUREMENT OFFICE

ARTICLE 1. GENERAL PROVISIONS

Section
R2-7-101. Definitions

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

PART B. COMPETITIVE SEALED BIDDING

Section
R2-7-B309. One Offer Received

PART C. COMPETITIVE SEALED PROPOSALS

Section
R2-7-C309. Only One Offer Received
R2-7-C311. Determination of Not Susceptible for Award
R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers
R2-7-C315. Final Proposal Revisions
R2-7-C316. Evaluation of Offers

PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

Section
R2-7-D303. Request for Quotation Issuance

**PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT PRESCRIBED IN
A.R.S. § 41-2535**

Section
R2-7-E301. Sole Source Procurements
R2-7-E303. Competition Impracticable Procurements

**PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS,
LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS**

Section
R2-7-F307. Late Offers

PART G. OTHER SOURCE SELECTION

Section
R2-7-G301. Request for Information

ARTICLE 4. SPECIFICATIONS

Section
R2-7-404. ~~Repeated~~ Conflict of Interest

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES

Section
R2-7-501. Procurement of Specified Professional and Construction Services
R2-7-503. Procurement of Construction Using Alternate Project Delivery Method
R2-7-504. Notice
R2-7-505. Selection Committee
R2-7-511. Individual Job Order Contracting

ARTICLE 6. CONTRACT CLAUSES

Section
R2-7-607. Mandatory Statewide Contracts
R2-7-608. Multiple Source Contracts

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS

Section

R2-7-A902. Stay of Procurements During the Protest

R2-7-A908. Agency Report

ARTICLE 13. ~~ONLINE BIDDING REPEALED~~

Section

R2-7-1301. ~~Online Solicitation Process Repealed~~

ARTICLE 1. GENERAL PROVISIONS

R2-7-101. Definitions

In this Chapter, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "Agency chief procurement officer" means the ~~person~~ procurement officer within a ~~purchasing agency, as identified by the state governmental agency head~~ state governmental unit, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other ~~procurement officer or~~ person within a state governmental unit who does not have this written delegation of authority.
3. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. "Alternate project delivery methods" means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. "Arizona Procurement Code" means A.R.S. Title 41, Chapter 23 and ~~A.A.C. Title 2,~~ this Chapter 7.
6. "Arizona state contract" means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. "Award" means a determination by the state that it is entering into a contract with one or more offerors.
8. "Bid" means an offer in response to solicitation.
9. "Bidder" means "offeror" as defined in R2-7-101(36).
10. "Brand name or equal specification" means a written description that uses one or more manufacturers' product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
11. "Brand name specification" means a written description limited to a list of one or more items by manufacturers' product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
12. "Clergy" means a minister of a religion.
13. "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.~~ is a range determined by the procurement officer on the basis of the criteria stated in the solicitation and an initial review of the proposals submitted. Those proposals that are susceptible for award after the initial review of all original proposals in accordance with the evaluation criteria and a comparison and ranking of original proposals shall be in the competitive range. Those proposals that have no reasonable chance for award when compared on a relative basis with more highly ranked proposals will not be in the competitive range. Proposals to be considered within the competitive range must, at a minimum, demonstrate the following:
 - a. Affirmative compliance with mandatory requirements designated in the solicitation.
 - b. An ability to deliver goods or services on terms advantageous to the state sufficient to be entitled to continue in the competition.
 - c. That the proposal is technically acceptable as submitted.
14. "Component" means a part of a manufactured product.
15. "Contract amendment" means a written modification of a contract under A.R.S. § 41-2503(8) or a unilateral exercise of a right contained in the contract.
16. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.

17. "Cost-plus-a-percentage-of-cost contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
18. "Day" means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. "Debarment" means an action taken by the director under R2-7-C901 that prohibits a person from participating in the state procurement process.
20. "Defective data" means data that is inaccurate, incomplete, or outdated.
21. "Dentist" means a person licensed under A.R.S. Title 32, Chapter 11.
22. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
23. "Discussion" means "negotiation" as defined in R2-7-101(34).
24. "Eligible procurement unit" means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency for disabled individuals as defined in A.R.S. § 41-2631, that is eligible under a cooperative agreement to use Arizona state contracts.
25. "Enterprise Procurement Services" means state procurement office as defined in R2-7-101(50).
26. "Filed" means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
27. "Finished goods" means units of a manufactured product awaiting sale.
28. "Force account" as used in A.R.S. § 41-2572, means work performed by the state's regularly employed personnel.
29. "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.
30. "In writing" has the same meaning as "written" or "writing" in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
31. "Interested party" means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
32. "Legal counsel" means a person licensed as an attorney by the Arizona Supreme Court.
33. "May" means something is permissive.
34. "Negotiation" means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by ~~these rules~~ this Chapter or statutes.
35. "Offer" means a response to a solicitation.
36. "Offeror" means a person ~~that~~ who responds to a solicitation.
37. "Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
38. "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.
39. "Procurement file" means the official records file of the director whether located in the office of the director or at a public procurement unit. The procurement file shall include (electronic or paper) the following:
 - a. List of notified vendors;
 - b. Final solicitation;
 - c. Solicitation amendments;
 - d. Bids and offers;
 - e. Final proposal revisions;
 - f. Discussions;
 - g. Clarifications;
 - h. Final evaluation reports; and
 - i. Additional information may be included, if requested by the agency chief procurement officer and approved by the state procurement administrator.
40. "Procurement request" means the document that initiates a procurement.
41. "Proposal" means an offer submitted in response to a solicitation.
42. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
43. "Raw materials" means goods, excluding equipment and machinery, purchased for use in manufacturing a product.
44. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.

45. "Shall" means something is mandatory.
46. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than \$4 million for the last complete fiscal year.
47. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
48. "Source selection method" means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.
49. "State procurement administrator" means the individual appointed by the director as a chief procurement officer for a state, or a state procurement administrator's authorized designee. A different title may be used for this position.
50. "State procurement office" means an office that acts under the authority delegated to the state procurement administrator.
51. "Suspension" means an action taken by the director under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
52. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

PART B. COMPETITIVE SEALED BIDDING

R2-7-B309. One Offer Received

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

1. Award the contract to the offeror and prepare a written determination that:
 - a. The price submitted is fair and reasonable under R2-7-702₂;
 - b. The offer is responsive₂; and
 - c. The offeror is responsible₂; or
2. Reject the offer and:
 - a. Resolicit for new offers₂;
 - b. Cancel the procurement₂; or
 - c. Use a different source selection method authorized under the Arizona Procurement Code.

PART C. COMPETITIVE SEALED PROPOSALS

R2-7-C309. Only One Offer Received

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

1. Award the contract to the offeror and prepare a written determination that:
 - a. The price submitted is fair and reasonable pursuant to R2-7-702₂; and
 - b. The offeror is ~~responsible~~ responsive₂; ~~or, and~~
 - c. The offeror is responsible, or
2. Reject the offer and:
 - a. Resolicit for new offers₂;
 - b. Cancel the procurement₂; or
 - c. Use a different source selection method authorized under the Arizona Procurement Code.

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

A. An agency chief procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award or not within the competitive range. The agency chief procurement officer shall place a written determination, based on one or more of the following, in the procurement file:

1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
3. The offer is not susceptible for award or 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 susceptible for award or is in the competitive range, the offer should be included for further consideration.

B. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award or not within the competitive range, unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors.

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

A. An agency chief procurement officer shall establish procedures and schedules for conducting negotiations. The agency chief procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from com-

Notices of Proposed Rulemaking

peting offers to another offeror.

- B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the ~~offeror~~ chief procurement officer shall confirm the negotiations in writing and provide to the offeror.
- C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be 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. An agency chief procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the state based on the requirements and the evaluation factors set forth in the solicitation.
- E. Responsible offerors determined to be susceptible for award and within the competitive range, 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 agency chief procurement officer.

R2-7-C315. Final Proposal Revisions

- A. An agency chief procurement officer shall request written final proposal revisions from any offeror with whom negotiations have been conducted, unless the offeror has been determined not within the competitive range or not susceptible for award under R2-7-C311 or nonresponsible under R2-7-C312. The agency chief 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 agency chief procurement officer shall request written final proposal revisions only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.
- C. If an apparent mistake, relevant to the award determination, is discovered after opening of final proposal revisions, the agency chief procurement officer shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
 - 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 - 2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information;₂
 - b. A request for correction including the corrected offer or a request for withdrawal;₂ and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- 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
 - 2. A request for correction including the corrected offer or a request for withdrawal;₂ and
 - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- E. In response to a request made under subsections (C) or (D), the agency chief procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the state. If an offeror does not provide written confirmation of the final proposal revision, the agency chief procurement officer shall make a written determination that the most recent written proposal revision submitted is the final proposal revision.

R2-7-C316. Evaluation of Offers

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

PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

R2-7-D303. Request for Quotation Issuance

The agency chief 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 which offers are due. The request for quotation shall be posted for a reasonable time as determined by the agency chief procurement officer based on the needs of the purchasing agency.~~
- ~~2.1. Distribute the request for quotation to a minimum of three small businesses. The agency chief 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 agency chief procurement officer is unable to locate a small minority or small women-owned business enterprise, the agency chief procurement officer shall document in the procurement file.~~
- ~~3.2. The agency chief procurement officer may cancel the request for quotation at any time, by making a written determination that cancellation is advantageous to the state.~~

PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

R2-7-E301. Sole Source Procurements

- A. For the purposes of this Section, the term "sole-source procurement" means a material or service procured without competition when:
 1. There is only a single source for the material or service; or
 2. No reasonable alternative source exists.
- B. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit a written request for approval to procure from a sole source to the state procurement administrator before proceeding. The request shall include the following information:
 1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists;
 2. The name of the proposed supplier;
 3. The duration and estimated total dollar value of the proposed procurement;
 4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702; and
 5. A description of efforts made to seek other sources.
- C. The state procurement administrator shall ~~post the request on the state procurement office web site and~~ send notice to registered vendors on the electronic system to invite comments on the sole-source request for ~~five~~ three working days. Following this period, the state procurement administrator shall either:
 1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.
- D. If the sole-source procurement is authorized or approved, the agency chief procurement officer shall negotiate a contract advantageous to the state.
- E. The agency chief procurement officer shall keep a record of all sole-source procurements pursuant to A.R.S. § 41-2551.

R2-7-E303. Competition Impracticable Procurements

- A. For the purposes of this Section, "competition impracticable" means a procurement requirement exists which makes compliance with A.R.S. § 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R2-7-E302. Procurements with a documented lack of available vendors in the marketplace and which require an open and continuous availability of offerors may be procured by this method.
- B. An agency chief procurement officer seeking a competition impracticable procurement shall obtain the approval of the state procurement administrator before proceeding. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202.
- C. The agency chief procurement officer shall submit a written request for approval containing the following:
 1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. § 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest;
 2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
 3. An explanation of why the proposed procurement process is advantageous to the state; and
 4. The scope, duration, and estimated total dollar value of the procurement need.
- D. The state procurement administrator shall:

Notices of Proposed Rulemaking

1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request.
- E. Before modifying the scope, duration, or cost of an approved competition impracticable procurement, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.
- F. The agency chief procurement officer shall keep a record of all competition impracticable procurements as required by A.R.S. § 41-2551.

PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS, LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS

R2-7-F307. Late Offers

- A. If a specific offer due date and time has been identified in the solicitation, the procurement officer shall reject any offer received after the specified offer due date and time.
1. The procurement officer shall accept a late offer if the document is received before contract award or it would have been received by the offer due date and time but for the action or inaction of state personnel directly serving the purchasing agency.
 2. Upon receiving a late offer, the procurement officer shall:
 - a. If the document is hand delivered, refuse to accept the delivery; or
 - b. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
 3. The procurement officer shall document a late offer in the procurement file; with as much information as available.
- B. If the solicitation has a designated, continuous day and time for offer opening and an offer is received after the day and time for offer opening, the procurement officer shall accept and log in the offer for the next scheduled day and time for offer opening.

PART G. OTHER SOURCE SELECTION

R2-7-G301. Request for Information

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

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. ~~To the extent allowed by law, information~~ 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.

ARTICLE 4. SPECIFICATIONS

R2-7-404. ~~Repealed~~ Conflict of Interest

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

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES

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

- A. The agency chief procurement officer shall procure specified professional services as defined in A.R.S. §§ ~~41-2578(A)~~ 41-2578, 41-2579 and 41-2581 in the following manner:
1. Through existing state contracts if available;
 2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 ~~for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535; single award procurements not to exceed the amount prescribed in A.R.S. § 41-2535 or 41-2579 for multiple award procurements;~~
 3. ~~In accordance with A.R.S. § 41-2578 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2578(C)(2); or~~
 4. May procure services in accordance with A.R.S. § 41-2536; or 41-2537; or 41-2578(C)(2) 41-2581.
- B. Unless an alternate project delivery method is used as permitted under R2-7-503, the agency chief procurement officer shall procure construction in the following manner:
1. Through existing state contracts if available;
 2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 for single award

procurements not ~~estimated~~ to exceed the amount prescribed in A.R.S. § 41-2535 or 41-2579 for multiple award procurements;

3. In accordance with A.R.S. § 41-2533 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or

4. May procure construction in accordance with A.R.S. § 41-2536 or 41-2537 or 2581.

C. The agency chief procurement officer shall procure construction through an alternate project delivery method in the following manner:

1. Through existing state contracts if available;

2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;

~~3. In accordance with A.R.S. § 41-2578 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or~~

~~4.3~~ May procure construction in accordance with A.R.S. § 41-2536 or 41-2537 or 41-2581.

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

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

1. Cost and cost control method;₂

2. Value engineering;₂

3. Market conditions;₂

4. Schedule;₂

5. Required specialized expertise;₂

6. Technical complexity of the project;₂ or

7. Project management.

R2-7-504. Notice

A. The agency chief procurement officer shall provide a copy of a solicitation for specified professional services or construction services to any person who requests a copy of the solicitation.

B. For procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall provide notice of the procurement in accordance with Part D of Article 3 of this Chapter, unless otherwise authorized pursuant to A.R.S. § 41-2536 or 41-2537.

C. For procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535:

1. The agency chief procurement officer shall make the solicitation available to prospective offerors registered at the State Procurement Office for the specific material, service, or construction being solicited; and

2. The agency chief procurement officer shall advertise at least once in a general circulation or industry trade publication. If practicable, the date of the advertisement shall be at least ~~15~~ 14 days before the offer due date.

R2-7-505. Selection Committee

A. The agency chief procurement officer shall appoint a selection committee when required under A.R.S. § 41-2578 or 41-2579 or 41-2581.

B. For the procurement of specified professional services not estimated to exceed the amount prescribed in A.R.S. § ~~41-2578(C)(2)~~ 41-2581, the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to five members who are appropriately qualified including the agency chief procurement officer as chair.

C. For the procurement of specified professional services estimated to exceed the amount prescribed in ~~A.R.S. § 41-2578(C)(2)~~ A.R.S. § 41-2578 or 41-2579 or 41-2581, ~~the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(2) and shall consist of three to seven members who are appropriately qualified including the agency chief procurement officer as chair.~~

R2-7-511. Individual Job Order Contracting

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

B. An agency chief procurement officer may use job order contracting for individual job orders estimated to cost \$250,000 or less, provided that:

1. The agency chief procurement officer obtains a cost estimate for the job order, before obtaining a cost proposal from the job order contractor; and

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

C. When authorized by the state procurement administrator, an agency chief procurement officer may use job order contracting for individual job orders estimated to cost more than \$250,000 or less than or equal to \$1,000,000, provided that:

Notices of Proposed Rulemaking

1. The agency chief procurement officer obtains a cost estimate for the job order from a person as defined in A.R.S. Title 32, Chapter 1, Article 1 before requesting a cost proposal from the job order contractor; and
 2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.
- D. The agency chief procurement officer may request cost proposals from multiple job order contractors or negotiate with a single job order contractor.
- E. The agency chief procurement officer may authorize contract change orders or amendments that result in the individual job order cost exceeding \$1,000,000 only with authorization from the state procurement administrator.
- F. Upon completion of the job order, the agency chief procurement officer shall document in the contract file a summary of the estimated or final costs and the reasons the award is in the best interests of the state.
- G. Conduct the procurement, as necessary in accordance with R2-7-B302, R2-7-B311, R2-7-B313, and R2-7-B325, unless a modified process is approved by the state procurement administrator.

ARTICLE 6. CONTRACT CLAUSES

R2-7-607. Mandatory Statewide Contracts

State governmental units shall use existing Arizona state contracts to satisfy their needs for those materials services covered under such contracts.

R2-7-608. Multiple Source Contracts

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

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS

R2-7-A902. Stay of Procurements During the Protest

- A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the ~~state procurement administrator~~ agency chief procurement officer shall make a written determination to either:
1. Proceed with the award or contract performance; or
 2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state.
- B. The ~~state procurement administrator~~ agency chief procurement officer shall provide the interested party, ~~agency chief procurement officer~~ state procurement administrator, and other interested parties with a copy of the written determination.
- C. The agency chief procurement officer may stay all or part of the procurement if it is determined that there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state. ~~The agency chief procurement officer shall notify the state procurement administrator and all interested parties of the stay in writing. Determination of the stay decision shall be issued no later than the time of issuance of a procurement officer's decision in accordance with R2-7-A903.~~
- D. Should the stay request be denied by the agency chief procurement officer the protestant may request a procurement stay from the state procurement administrator. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the agency chief procurement officer.

R2-7-A908. Agency Report

- A. The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within ~~14~~ 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The agency chief procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
1. The appeal;
 2. The offer submitted by the interested party;
 3. The offer of the firm that is being considered for award;
 4. The solicitation, including the specifications or portions relevant to the appeal;
 5. The abstract of offers or relevant portions;
 6. Any other documents that are relevant to the protest; and
 7. A statement by the agency chief procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.
- B. The agency chief procurement officer may submit a written request to the director for an extension of the time period for filing the report as prescribed in subsection (A), identifying the reason for extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The director shall notify the agency chief procurement officer, the state procurement administrator, and the interested party in writing that the time for the submission of the report is extended, providing the date on

which the report must be submitted.

- C. The interested party shall file comments on the agency report with the director within 10 days after receipt of the report. The interested party shall provide copies of the comments to the agency chief procurement officer, the state procurement administrator, and other interested parties.
- D. The interested party may submit a written request to the director for an extension of the period for submission of comments, identifying the reasons for the extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments. The director shall notify the agency chief procurement officer and the state procurement administrator of any extension.

ARTICLE 13. ~~ONLINE BIDDING REPEALED~~

R2-7-1301. ~~Online Solicitation Process Repealed~~

- ~~A. The agency chief procurement officer shall submit a written request to procure for a single procurement or group of procurements from the state procurement administrator before proceeding with online bidding as defined in A.R.S. § 41-2671. The request shall include the following information:
 - 1. An estimate of the number of prospective offerors;
 - 2. A description of the proposed online 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 state; and
 - 4. The scope, duration, and estimated total dollar value of the procurement need.~~
- ~~B. The state procurement administrator shall:
 - 1. Issue written approval, with any conditions or restrictions;
 - 2. Request additional information from the agency chief procurement officer; or
 - 3. Deny the request.~~
- ~~C. Before modifying the scope, duration, or cost of an approved online solicitation process, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.~~