

## 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 13. PUBLIC SAFETY

#### CHAPTER 7. DEPARTMENT OF PUBLIC SAFETY

#### REPORTING BY SCRAP-METAL AND USED-AUTOMOTIVE-COMPONENTS DEALERS

*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 210.) The Governor's Office authorized the notice to proceed through the rulemaking process on March 22, 2012, and November 28, 2012.*

[R13-12]

#### PREAMBLE

- | <b><u>1. Article, Part, and Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
|--|---------------------------------|
| R13-7-101  | New Section                     |
| R13-7-102  | New Section                     |
| R13-7-103  | New Section                     |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 41-1713(A)(4)  
Implementing statute: A.R.S. §§ 44-1327(B), 44-1644(B), and 44-1647
- 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. 772, March 30, 2012  
Notice of Rulemaking Docket Opening: 18 A.A.R. 3325, December 21, 2012
- 4. The agency's contact person who can answer questions about the rulemaking:**
- |            |  |
|------------|--|
| Name:      | Sgt. Gregory Zatcoff   |
| Address:   | Department of Public Safety<br>POB 6638 Mail drop 1000<br>Phoenix, AZ 85005-6638 |
| Telephone: | (602) 223-2264   |
| Fax:       | (602) 223-2917   |
| E-mail:    | gzatcoff@azdps.gov   |
| Web site:  | www.azdps.gov  |
- or
- |            |   |
|------------|---|
| Name:      | Paul Swietek  |
| Address:   | Department of Public Safety<br>2102 W. Encanto Blvd.<br>Phoenix, AZ 85009 |
| Telephone: | (602) 223-2049  |
| Fax:       | (602) 223-2945  |

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E-mail: pswietek@azdps.gov

Web site: www.azdps.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:**

In an effort to protect the environment from improperly disposed lead-acid batteries, the legislature established requirements requiring that lead-acid batteries be recycled (See A.R.S. § 44-1322). As part of this effort and to thwart unlawful recycling due to theft, a used-automotive-components dealer is required to submit an electronic record regarding receipt of most lead-acid batteries to the Department of Public Safety within 24 hours of receipt. The Department is required to establish standards for the electronic submission. This rulemaking establishes those standards.

Similarly, in an effort to combat the problem of metal theft, A.R.S. § 44-1644(B) requires a scrap-metal dealer to submit an electronic record regarding receipt of most scrap metal to the Department of Public Safety within 24 hours of receipt. The Department is required to establish standards for the electronic submission. This rulemaking establishes those standards.

The Department was granted exceptions to the rulemaking moratorium contained in Executive Order 2012-03 in e-mails from Steven Killian dated March 22, 2012, and November 28, 2012.

**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:**

The Department did not review a study relevant to the rules. This rulemaking does not rely on scientific principles or methods.

**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:**

The rulemaking does not diminish a previous grant of authority to a political subdivision. However, A.R.S. § 44-1645 indicates that the state has preemption with regard to regulation of scrap-metal dealers.

**8. The preliminary summary of the economic, small business, and consumer impact:**

The primary economic impact on used-automotive-components dealers and scrap-metal dealers results from the legislature's decision to require recordkeeping and electronic submission of the records. The legislature specified the information that is required to be obtained, including a photograph of the lead-acid batteries or scrap metal received and the seller of the lead-acid batteries or scrap metal. There will be minimal economic impact from the standards established in this rulemaking.

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

Name: Sgt. Gregory Zatcoff  
Address: Department of Public Safety  
POB 6638 Mail drop 1000  
Phoenix, AZ 85005-6638  
Telephone: (602) 223-2264  
Fax: (602) 223-2917  
E-mail: gzatcoff@azdps.gov  
Web site: www.azdps.gov

or

Name: Paul Swietek  
Address: Department of Public Safety  
2102 W. Encanto Blvd.  
Phoenix, AZ 85009  
Telephone: (602) 223-2049  
Fax: (602) 223-2945  
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**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:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: Monday, March 11, 2013  
Time: 10:00 a.m.  
Location: Arizona Peace Officer Standards and Training Board  
2643 E. University Drive  
Phoenix, AZ 85034

The rulemaking record will close at 5:00 p.m. on Friday, March 15, 2013.

**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:**

None

**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:**

The rules do not require a permit.

**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:**

Federal law is not applicable to the subject of the rules.

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

No analysis was submitted.

**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 13. PUBLIC SAFETY**

**CHAPTER 7. DEPARTMENT OF PUBLIC SAFETY**

**REPORTING BY SCRAP-METAL AND USED-AUTOMOTIVE-COMPONENTS DEALERS**

**ARTICLE 1. REPORTING BY SCRAP-METAL AND USED-AUTOMOTIVE-COMPONENTS DEALERS**

Section

R13-7-101. Definitions

R13-7-102. Standards for Electronic Reporting Receipt of Scrap Metal

R13-7-103. Standards for Electronic Reporting Receipt of Lead-acid Batteries

**ARTICLE 1. REPORTING BY SCRAP-METAL AND USED-AUTOMOTIVE-COMPONENTS DEALERS**

**R13-7-101. Definitions**

**A.** The definitions in A.R.S. §§ 44-1321 and 44-1641 apply to this Article.

**B.** "Department" means the Arizona Department of Public Safety.

**R13-7-102. Standards for Electronic Reporting Receipt of Scrap Metal**

**A.** Under A.R.S. § 44-1644(A), a scrap-metal dealer shall, within 24 hours of receipt of scrap metal by any method, including purchase, barter, or trade, electronically submit to the Department a record of receipt of the scrap metal if:

1. The scrap-metal dealer pays more than the amount specified in A.R.S. § 44-1642(A), or an equivalent amount in barter or trade, for the scrap metal received, and

2. The scrap-metal seller:

a. Is not an industrial account;

b. Is not a scrap-metal dealer; or

c. If receipt of the scrap metal is prohibited under A.R.S. § 44-1642.01(A), the scrap-metal seller has evidence that

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the scrap metal was authorized for release by a peace officer of the jurisdiction in which the scrap-metal dealer does business.

- B.** A scrap-metal dealer required to submit an electronic record under subsection (A) shall submit the record into the software program made available by the Department. The scrap-metal dealer may:
1. Submit the record directly into the software program made available by the Department, or
  2. Upload the record from a point-of-sale software program of the scrap-metal dealer's choice into the software program made available by the Department.
- C.** A scrap-metal dealer required to submit an electronic record under subsection (A) shall ensure that the record includes the following information:
1. Date and time of receipt of scrap metal;
  2. Place at which the scrap metal was received;
  3. Predominate composition of each scrap metal received and for each kind of scrap metal received:
    - a. The form in which the scrap metal was received, and
    - b. The weight of each form of each scrap metal received;
  4. One or more photographs that show all of the scrap metal received clearly enough to identify the kind and form of all the scrap metal received. The photograph may be taken with the point-of-sale software program if it is equipped with a camera, a digital still camera, or a video camera;
  5. Amount of money or other consideration paid for each kind of scrap metal in each form received;
  6. Description of the individual who delivered the scrap metal, including:
    - a. Gender,
    - b. Height and weight,
    - c. Race,
    - d. Hair and eye colors,
    - e. Address, and
    - f. Date of birth;
  7. Photocopy of one of the following for the individual who delivered the scrap metal:
    - a. Current driver license,
    - b. Non-operating identification license issued under A.R.S. § 28-3165, or
    - c. Photo identification card issued by a tribal government or the U.S. military; and
  8. Number and state of issuance of the license of the motor vehicle used to deliver the scrap metal.
- D.** The Department shall ensure that an incomplete report submitted under subsection (C) is rejected. A scrap-metal dealer whose report is rejected shall complete and resubmit the report within the time provided under subsection (A).

**R13-7-103. Standards for Electronic Reporting Receipt of Lead-acid Batteries**

- A.** Under A.R.S. § 44-1327(A), a used-automotive-components dealer shall, within 24 hours of receipt of lead-acid batteries by any method including purchase, barter, or trade, electronically submit to the Department a record of receipt of the lead-acid batteries if:
1. The used-automotive-components dealer receives two or more lead-acid batteries in a single transaction, excluding any lead-acid battery that is a component of a vehicle being purchased; and
  2. The lead-acid-battery seller is not:
    - a. An industrial account; or
    - b. A used-automotive-components dealer.
- B.** A used-automotive-components dealer required to submit an electronic record under subsection (A) shall submit the record into the software program made available by the Department. The used-automotive-components dealer may:
1. Submit the record directly into the software program made available by the Department, or
  2. Upload the record from a point-of-sale software program of the used-automotive-components dealer's choice into the software program made available by the Department.
- C.** A used-automotive-components dealer required to submit an electronic record under subsection (A) shall ensure that the record includes the following information:
1. Date and time of receipt of the lead-acid batteries;
  2. Place at which the lead-acid batteries were received;
  3. Description of each lead-acid battery received, including:
    - a. Voltage,
    - b. Amperage,
    - c. Manufacturer, and
    - d. Model name and number;
  4. One or more photographs that clearly show each lead-acid battery received. The photograph may be taken with the point-of-sale software program if it is equipped with a camera, a digital still camera, or a video camera;
  5. Amount of money or other consideration paid for the lead-acid batteries received;

6. Description of the individual who delivered the lead-acid batteries, including:
    - a. Gender.
    - b. Height and weight.
    - c. Race.
    - d. Hair and eye colors.
    - e. Address, and
    - f. Date of birth;
  7. Photocopy of one of the following for the individual who delivered the lead-acid batteries:
    - a. Current driver license.
    - b. Non-operating identification license issued under A.R.S. § 28-3165, or
    - c. Photo identification card issued by a tribal government or the U.S. military; and
  8. Number and state of issuance of the license of the motor vehicle used to deliver the lead-acid batteries.
- D.** The Department shall ensure that an incomplete report submitted under subsection (C) is rejected. A used-automotive-components dealer whose report is rejected shall complete and resubmit the report within the time provided under subsection (A).

## NOTICE OF PROPOSED RULEMAKING

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

#### CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

*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 210.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 13, 2012.*

[R13-13]

#### PREAMBLE

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R19-3-501	Amend
R19-3-503	Amend
R19-3-505	Amend
R19-3-506	Amend
R19-3-508	Amend
R19-3-509	Amend
R19-3-511	Amend
R19-3-514	Amend
R19-3-517	Amend
R19-3-518	Amend
R19-3-520	Amend
R19-3-521	Amend
R19-3-523	Amend
R19-3-524	Amend
R19-3-525	Amend
R19-3-528	Amend
R19-3-529	Amend
R19-3-530	Amend
R19-3-531	Amend
R19-3-532	Amend
R19-3-533	Amend
R19-3-534	Amend
R19-3-535	Amend
R19-3-537	Amend
R19-3-538	Amend
R19-3-539	Amend
R19-3-540	Amend
R19-3-544	Amend
R19-3-545	Amend
R19-3-547	ReNUMBER

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R19-3-547	New Section
R19-3-548	ReNUMBER
R19-3-548	New Section
R19-3-549	ReNUMBER
R19-3-549	New Section
R19-3-550	ReNUMBER
R19-3-550	Amend
R19-3-551	ReNUMBER
R19-3-552	ReNUMBER
R19-3-553	ReNUMBER
R19-3-553	Amend
R19-3-554	ReNUMBER
R19-3-554	Amend
R19-3-555	ReNUMBER
R19-3-555	Amend
R19-3-556	ReNUMBER
R19-3-556	Amend
R19-3-557	ReNUMBER
R19-3-557	Amend
R19-3-558	Repeal
R19-3-558	New Section
R19-3-559	ReNUMBER
R19-3-559	New Section
R19-3-560	ReNUMBER
R19-3-560	New Section
R19-3-561	Repeal
R19-3-561	ReNUMBER
R19-3-562	ReNUMBER
R19-3-562	New Section
R19-3-563	New Section
R19-3-564	ReNUMBER
R19-3-565	ReNUMBER
R19-3-565	Amend
R19-3-566	ReNUMBER
R19-3-566	Amend
R19-3-567	ReNUMBER
R19-3-568	ReNUMBER
R19-3-568	Amend

**2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 5-554(B)

Implementing statutes: A.R.S. §§ 5-559, 41-2501(F)

**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 rules:**

Notice of Rulemaking Docket Opening: 19 A.A.R. 51, January 11, 2013

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

Name: Jeff Hatch-Miller, Executive Director

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

Telephone: (480) 921-4505

Fax: (480) 921-4488

E-mail: JHatch-Miller@azlottery.gov

or

Name: Pam DiNunzio

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

Notices of Proposed Rulemaking

Telephone: (480) 921-4489  
Fax: (480) 921-4488  
E-mail: pdinunzio@azlottery.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 Lottery's Procurement rules establish the policies and procedures for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets and related materials. The Lottery is amending these rules to remove outdated terminology and procedures, clarify existing language and procedures, and add new language as necessary to respond to issues outlined in the Lottery's 2011 five-year-review report. Amendments have also been made to conform to recent state procurement rule changes recently approved by Council and effective in January 2013. A.R.S. § 41-2501(F) requires the Lottery director to adopt rules substantially equivalent to the policies and procedures of the Arizona Procurement Code for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, or related materials.

**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:**

***1. Identification of the proposed rulemaking.***

The rules for Article 5, Procurements, prescribe procurement policies and procedures relating to the design and operation of the Lottery or the purchase of Lottery equipment, tickets, and related materials. These rules govern the Lottery's procurement processes and provide open access to procurement opportunities. The rulemaking clarifies existing language and procedures, adds new sections to improve understanding, and also makes changes that conform to recently approved amendments to the Arizona Procurement Code. This rulemaking does not change the Lottery's procurement authority.

Conduct and frequency of occurrence: There is no specific conduct this rulemaking is designed to change.

***2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.***

The Lottery anticipates this rulemaking will primarily impact the agency and businesses supplying products or services to the Lottery.

***3. Cost-benefit Analysis.***

***a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking, including the number of new full-time employees necessary to implement and enforce the proposed rules.***

A.R.S. § 41-2501(F) exempts the Lottery from provisions of the Arizona Procurement Code for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, and related materials. A.R.S. § 41-2501(F) also requires the Lottery director to adopt rules substantially equivalent to the policies and procedures of the Arizona Procurement Code for these types of procurements. The rulemaking benefits the Lottery by maintaining an efficient procurement process, reducing the potential for protests and appeals, and improving rule clarity and ease of use.

The Lottery employs one full-time Procurement Officer. Costs to the Lottery related to this rulemaking include time spent by procurement staff to process purchases and secure contracts for the agency, in addition to the cost of the procurement itself. These costs are included in the agency's annual appropriation and are part of normal operating expenses. In FY12, total expenditures for all procurements were \$34.4 million, of which approximately \$32 million were awarded under the Lottery procurement rules. The rule amendments are primarily administrative in nature and the Lottery does not anticipate any additional costs to the agency or procurement functions as a result of this rulemaking.

The agency has only had one procurement appeal within the last five years. This appeal involved the Lottery's procurement for advertising services and was not completely unexpected due to the multi-million dollar value of the contract. The procurement officer's decision was upheld by the State Procurement Office.

Impact on Other Agencies/FTE: The rules have no identifiable impact on other agencies. The Lottery does not anticipate the need to hire any additional full-time employees; existing staff resources will be used to implement the proposed rules.

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***b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.***

This rulemaking will not have any identifiable impact on political subdivisions of the state.

***c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.***

Businesses impacted by these rules are vendors supplying products or services to the Lottery. The impact on these businesses, including small businesses, should be positive. The rules provide for competition, consistency, and equal treatment with respect to procurement procedures. Improved organization, presentation, and clarity should provide better understanding and ease of use as compared to the existing rules. Consistent with state procurement amendments, new provisions have been added that address conflict of interest situations, as well as providing prospective suppliers with further recourse concerning procurement stay requests. These provisions protect potential suppliers. Businesses will also benefit from consistency between Lottery procurement rules and revised state procurement rules.

Costs to businesses include any operational expenses necessary to comply with procurement procedures, in addition to the cost of providing supplies or services to the Lottery. These operational expenses are a cost of conducting business and are presumed to have been reflected in vendor pricing.

***4. Probable impact on private and public employment in businesses, agencies, and political subdivisions of the state directly affected by the proposed rulemaking.***

This rulemaking will not have any identifiable impact on private and public employment.

***5. Probable impact of the proposed rulemaking on small business.***

***a. Identification of the small businesses subject to the proposed rulemaking.***

Small businesses impacted by these rules are also vendors supplying products or services to the Lottery. The impact on small businesses should be positive. These businesses will benefit from procurements specifically targeted to small businesses as provided in R19-3-532, consistent with state procurement rules. Except in specific instances, contracts must be awarded to a small business. The proposed rulemaking does not change this provision, and small businesses should continue to benefit from more open access to contracting opportunities. In FY12, small and minority-owned businesses accounted for about \$14 million of expended funds. Small businesses will also benefit from consistency between Lottery procurement rules and revised state procurement rules.

***b. Administrative and other costs required for compliance with the proposed rulemaking.***

Any administrative costs incurred to comply with procurement procedures will apply to all businesses, including small businesses.

***c. A description of the methods that the agency may use to reduce the impact on small businesses.***

As stated above, the impact on small businesses should be a positive. Requests for quotation must include small businesses, and unless specific exceptions apply, the contract must be awarded to a small business.

***d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.***

There are no direct costs to consumers or the general public associated with the adoption of these rules. Private persons and consumers will benefit from greater efficiency in the procurement process and the ability to secure the best value for the state.

***6. Probable effect on state revenues.***

This rulemaking should not have any immediate measurable impact on state revenues or expenses. However, efficient procurement procedures will help ensure the best value to the state when purchasing goods and services. The long-term effect should be a cost reduction resulting from greater efficiencies in the procurement process and the ability to negotiate the lowest cost to the state.

***7. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.***

The Lottery is unaware of any other less intrusive or less costly methods for achieving the purpose of the rulemaking. The Lottery does not require additional funding or personnel resources to implement the amended rules and is required by A.R.S. § 41-2501(F) to adopt rules that are consistent with the policies and procedures of the Arizona Procurement Code. Procurement procedures are designed to ensure fairness to vendors while providing the best value to the Lottery and the state.

***8. Description of any data on which the rule is based.***

Not applicable to this rulemaking.

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

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Name: Pam DiNunzio  
Address: Arizona State Lottery  
4740 E. University Drive  
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Telephone: (480) 921-4489  
Fax: (480) 921-4488  
E-mail: pdinunzio@azlottery.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:**

Date: March 15, 2013  
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 March 15, 2013, for written comments and the end of the oral proceeding for verbal comments. Written comments should be directed to the person listed in item 9.

**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:**

No other matters are 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 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION**

**ARTICLE 5. PROCUREMENTS**

Section

R19-3-501. Definitions  
R19-3-503. Confidential Information  
R19-3-505. Prospective Suppliers List  
R19-3-506. Source Selection Method: Determination Factors  
R19-3-508. Bid Solicitation Requirements  
R19-3-509. Request for Proposal Solicitation Requirements  
R19-3-511. Solicitation Amendment  
R19-3-514. Receipt, Opening, and Recording of Offers  
R19-3-517. One Offer Received  
R19-3-518. Offer Mistakes Discovered After Offer Opening and Before Award  
R19-3-520. Determination of Not Susceptible for Award

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- R19-3-521. Bid Evaluation
- R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers
- R19-3-524. Final Proposal Revisions
- R19-3-525. Evaluation of Proposal Offers
- R19-3-528. Proposal Contract Award
- R19-3-529. Mistakes Discovered After Bid Award
- R19-3-530. Mistakes Discovered After Proposal Award
- R19-3-531. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535
- R19-3-532. Solicitation – Request for Quotation
- R19-3-533. Request for Quotation Issuance
- R19-3-534. Quotation Contract Award
- R19-3-535. Sole Source Procurements
- R19-3-537. Competition Impracticable Procurements
- R19-3-538. Request for Information
- R19-3-539. Demonstration Projects
- R19-3-540. General Services Administration Contracts
- R19-3-544. Contract Change Orders and Amendments
- R19-3-545. Multi-term Contracts
- R19-3-547. Mandatory Statewide Contracts
- R19-3-548. Multiple Source Contracts
- R19-3-549. Conflict of Interest
- ~~R19-3-547-R19-3-550.~~ Determination of Fair and Reasonable Price
- ~~R19-3-548-R19-3-551.~~ Submission and Certification of Cost or Pricing Data
- ~~R19-3-549-R19-3-552.~~ Refusal to Submit Cost or Pricing Data
- ~~R19-3-550-R19-3-553.~~ Defective Cost or Pricing Data
- ~~R19-3-551-R19-3-554.~~ Protest of Solicitations and Contract Awards
- ~~R19-3-552-R19-3-555.~~ Stay of Procurements During the Protest
- ~~R19-3-553-R19-3-556.~~ Resolution of Solicitation and Contract Award Protests
- ~~R19-3-554-R19-3-557.~~ Remedies by the Procurement Officer
- ~~R19-3-558.~~ Issuance of a Timely Decision Repealed
- R19-3-558. Appeals to the Director Regarding Protest Decision
- R19-3-559. Notice of Appeal to the Director Regarding Protests
- R19-3-560. Stay of Procurement During Appeal to Director
- ~~R19-3-561.~~ Online Solicitation Process Repealed
- ~~R19-3-555-R19-3-561.~~ Agency Report Regarding Protest Appeals
- R19-3-562. Remedies by the Director
- R19-3-563. Dismissal Before Hearing
- ~~R19-3-556-R19-3-564.~~ Controversies Involving Contract Claims Against the Lottery
- ~~R19-3-557-R19-3-565.~~ Procurement Officer’s Decision Regarding Contract Claims
- ~~R19-3-559-R19-3-566.~~ Appeals and Reports to the Director Regarding Contract Claims
- ~~R19-3-560-R19-3-567.~~ Controversies Involving Lottery Claims Against the Contractor
- ~~R19-3-562-R19-3-568.~~ Guidance

ARTICLE 5. PROCUREMENTS

**R19-3-501. Definitions**

In this Article, unless the context otherwise requires:

1. “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.
- ~~1-2.~~ “Best interests of the Lottery” means advantageous to the Lottery.
- ~~2-3.~~ “Bid” means an offer in response to solicitation.
- ~~3-4.~~ “Business” means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.
- ~~4-5.~~ “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.
- ~~5-6.~~ “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 Lottery sufficient to be entitled to continue in the competition.
- c. That the proposal is technically acceptable as submitted.

~~6-7.~~ “Contract” means an agreement, regardless of what it is called, for the procurement of Lottery equipment, tickets, and related materials.

~~7-8.~~ “Contract 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.

~~8-9.~~ “Contractor” means a person who has a contract with the Lottery.

~~9.~~ “Cost analysis” means the evaluation of cost data.

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.

11. “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.

~~12.~~ “~~Cost reimbursement~~ 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.

~~13.~~ “~~Days~~ Day” means ~~a calendar days~~ day and is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.

14. “Defective data” means data that is inaccurate, incomplete, or outdated.

15. “Director” means the Executive Director of the State Lottery.

16. “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.”

17. “Filed” means delivered to the ~~office of the Director~~ Arizona Lottery, 4740 E. University Dr., Phoenix, AZ 85034. A time/date stamp affixed to a document by the ~~office of the Director~~ procurement officer or the procurement officer’s delegate when the document is delivered determines the time of filing.

~~18.~~ “~~Governing instruments~~” means ~~legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, bylaws, or similar documents.~~

~~19.~~ “~~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.~~

~~20-18.~~ “Interested party” means an 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.

~~21-19.~~ “Invitation for bids” means all documents, whether attached or incorporated by reference, that are used to solicit bids in accordance with R19-3-508.

~~22-20.~~ “Minor informality” means any mistake, 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.

~~23-21.~~ “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.

~~24-22.~~ “Multi-step sealed bidding” means a two-phase bidding process consisting of a technical phase and a price phase.

~~25-23.~~ “Negotiation” means an exchange or series of exchanges between the Lottery and an offeror or contractor that

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allows the Lottery or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules or statutes.

~~26-24.~~ “Offer” means a response to a solicitation.

~~27-25.~~ “Offeror” means a person ~~that~~ who responds to a solicitation.

~~28-26.~~ “Person” means any corporation, limited liability company, limited liability partnership, partnership, business, individual, union, committee, club, other organization, or group of individuals.

~~29-27.~~ “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.

~~30-28.~~ “Procurement” means 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.

~~31-29.~~ “Procurement file” means the official records file of the ~~Director whether located in the office of the Director or at a public procurement unit~~ Lottery. 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, if requested by the procurement officer.

~~32.~~ “~~Procurement request~~” ~~means the document that initiates a procurement.~~

~~33-30.~~ “Proposal” means an offer submitted in response to a solicitation.

~~34-31.~~ “Prospective offeror” means a person that expresses an interest in a specific solicitation.

~~35-32.~~ “Purchase description” means the words used in a solicitation to describe Lottery materials to be procured and includes specifications attached to, or made a part of, the solicitation.

~~36-33.~~ “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.

~~37-34.~~ “Request for proposals” means all documents, whether attached or incorporated by reference, that are used to solicit proposals in accordance with R19-3-509.

~~38-35.~~ “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.

~~39-36.~~ “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.

~~40-37.~~ “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.

~~41-38.~~ “Services” means the labor, time, or effort furnished by a contractor with no expectation that a specific end product other than required reports and performance will be delivered. Services does not include employment agreements or collective bargaining agreements.

~~42-39.~~ “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 four million dollars for the last complete fiscal year.

~~43-40.~~ “Solicitation” means an invitation for bids, a request for technical offers, a request for proposals, a request for quo-

tations, or any other invitation or request issued by the Lottery to invite a person to submit an offer.

~~44-41.~~ “Specification” means a description of the physical or functional characteristics, or of the nature of a Lottery material or service. Specification includes a description of any requirement for inspecting, testing, or preparing a Lottery material for delivery.

~~45-42.~~ “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.

~~46-43.~~ “Suspension” means an action taken by the Director ~~or of~~ the state procurement office under R2-7-901 that temporarily disqualifies a person from participating in a state procurement process.

~~47-44.~~ “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.

~~48-45.~~ “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.

**R19-3-503. Confidential Information**

- A. If a person wants to assert that a person’s offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate 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 that the offeror and protestor submit factual and legal comments on the issue by a date certain.
- D. After reviewing the statements or expiration of the time to comment, or both, 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 in A.R.S. Title 41, Chapter 6, Article 10 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.

**R19-3-505. Prospective Suppliers List**

- 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. Source Selection Method: Determination Factors**

- 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 5-559~~ and 41-2501(F).
- B. If the procurement officer believes that an existing Arizona state contract 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~~ The procurement officer shall determine in writing that

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an invitation for bid is not practicable or advantageous to the Lottery before soliciting for offers for a competitive sealed proposal. ~~Competitive sealed bidding~~ An invitation for bid 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.

**R19-3-508. Bid Solicitation Requirements**

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. Request for Proposal Solicitation Requirements**

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<sub>2</sub> and
  - b. Any other contract terms and conditions.

**R19-3-511. Solicitation Amendment**

- A. The procurement officer shall issue a solicitation amendment to do any or all of the following:
  1. Make changes in the solicitation<sub>2</sub>
  2. Correct defects or ambiguities<sub>2</sub>
  3. Provide additional information or instructions<sub>2</sub> 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.

**R19-3-514. Receipt, Opening, and Recording of Offers**

- 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.

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- 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~~ For a bid solicitation, 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.** For a proposal solicitation, 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 and record the name of each offeror and any other relevant information as determined by the procurement officer. The procurement officer shall make the record of offers available for public viewing.
- D-E.** Except for the information identified in ~~subsection~~ subsections (C) and (D), 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.

**R19-3-517. One Offer Received**

If only one offer is received in response to a solicitation, the 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 ~~R19-3-547~~; R19-3-550.
  - 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. Offer Mistakes Discovered After Offer Opening and Before Award**

- A.** If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, 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.

**R19-3-520. Determination of Not Susceptible for Award**

- A.** The procurement officer may determine at any time during the evaluation period and before award that an offer is not sus-

ceptible for award or not within the competitive range. 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
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 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 procurement officer determines notification to the offeror would compromise the Lottery's ability to negotiate with other offerors.

**R19-3-521. Bid Evaluation**

- 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.

**R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers**

- 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~~ 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. 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 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 procurement officer.

**R19-3-524. Final Proposal Revisions**

- 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 within the competitive range or 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

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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.
- 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. Evaluation of Proposal Offers**

- 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. This evaluation report shall supersede all previous draft evaluations or evaluation reports. 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.

**R19-3-528. Proposal Contract Award**

- 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~~ R19-3-550 through ~~R19-3-550~~ R19-3-553.
- 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 may authorize a meeting of the Lottery Commission to be held for consideration of the award.
1. The Director shall provide notice of the meeting in compliance with Open Meeting Law, including notice of an executive session to provide information concerning the award and the procurement officer's evaluation of the offers.
  2. The Lottery Commission shall not take action 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 occur regarding specified issues. If further negotiations are directed, the procurement officer shall 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~~ an award becomes effective and binding, the procurement officer shall return any offer security provided by the offeror.

- G. Within 10 days after ~~contract 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.

**R19-3-529. Mistakes Discovered After Bid Award**

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

- A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
  2. A request for correction including the corrected offer or a request for withdrawal; and
  3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the 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
  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 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. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535**

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; or
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. Solicitation – Request for Quotation**

- 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:

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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. Request for Quotation Issuance**

The procurement officer shall issue the request for quotation by ~~one of these methods:~~ distributing the request for quotation to a minimum of three small businesses. The procurement officer shall rotate suppliers invited to submit quotations. The procurement officer may cancel the request for quotation at any time.

- ~~1. Post the request for quotation on the state procurement officer'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. Quotation Contract Award**

- 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 effective and binding.

**R19-3-535. 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 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; R19-3-550,~~ 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 officer web site and~~ send notice to registered vendors on the state's electronic system to invite comments on the sole-source request for ~~five~~ three working days. Following this period, the procurement officer shall either:
  1. Issue a written determination with any conditions or restrictions; or
  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.
- F. The procurement officer shall keep a record of all sole-source procurements.

**R19-3-537. Competition Impracticable Procurements**

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- A. For the purposes of this Section, “competition impracticable” means a procurement requirement exists which makes compliance with A.R.S. § ~~5-509~~ 5-559 and these rules impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R19-3-536. 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. The procurement officer shall make a written determination ~~for approval containing~~ that includes the following information:
  - 1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. § ~~5-509~~ 5-559 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. Request for Information**

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~~ Information contained in a response to a request for information ~~may~~ shall be considered confidential until the procurement process is concluded or two years, whichever occurs first unless authorized by the procurement officer.
- 3. There is no required format to be used for requests for information.

**R19-3-539. Demonstration Projects**

- 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 the 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 the 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. General Services Administration Contracts**

- 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<sup>2</sup>;
  - 2. Price is equal to or less than the contractor’s current GSA price<sup>2</sup>;
  - 3. Price is fair and reasonable<sup>2</sup>;
  - 4. Contractor is willing to offer GSA pricing and terms to the Lottery<sup>2</sup>;
  - 5. Comparable products or services are not available under a state or agency contract<sup>2</sup>;
  - 6. Comparable products or services are not restricted under a set-aside contract<sup>2</sup> 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

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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.

**R19-3-544. Contract Change Orders and Amendments**

- 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~~ R19-3-550.
- C. The procurement officer may, in situations in which time or economic considerations preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements in accordance with A.R.S. § 41-2537.

**R19-3-545. Multi-term Contracts**

- 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 may 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; ~~and~~
  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.

**R19-3-547. Mandatory Statewide Contracts**

The Lottery shall use existing Arizona state contracts to satisfy the need for materials and services covered under such contracts, unless a written determination is made by the procurement officer that the available statewide contracts do not meet the Lottery's needs.

**R19-3-548. Multiple Source Contracts**

Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the Lottery, unless a written determination is made by the procurement officer providing otherwise.

**R19-3-549. 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 procurement officer may waive the restriction set forth in subsection (A) if the procurement officer determines in writing that the rule's application would not be in the Lottery's best interest. The determination shall state the specific reasons that the restriction in subsection (A) has been waived.

**~~R19-3-547~~ R19-3-550. Determination of Fair and Reasonable Price**

- 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~~R19-3-551. Submission and Certification of Cost or Pricing Data**

- A. The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the 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~~R19-3-552. Refusal to Submit Cost or Pricing Data**

- A. If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the procurement officer may reject the offer.
- B. If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the 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.

**~~R19-3-550~~R19-3-553. Defective Cost or Pricing Data**

- 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~~ R19-3-554 through ~~R19-3-559~~ R19-3-566. 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.

**~~R19-3-551~~R19-3-554. Protest of Solicitations and Contract Awards**

- A. Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
- B. The interested party shall file the protest in writing with the 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~~R19-3-555. 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 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 determi-

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nation.

- C. Determination of a stay decision shall be issued no later than the time of issuance of the procurement officer's decision in accordance with R19-3-556.
- D. Should a stay request be denied by the procurement officer, the protestant may request a procurement stay from the Director. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the procurement officer.

~~R19-3-553~~**R19-3-556. 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 ~~R19-3-554~~ R19-3-554. 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 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~~**R19-3-557. 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.

~~R19-3-558. Issuance of a Timely Decision Repealed~~

~~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.~~

**R19-3-558. Appeals to the Director Regarding Protest Decision**

- A. An interested party may appeal the decision entered or deemed to be entered by the procurement officer to the Director within 30 days after the date the decision is received or deemed received under R19-3-556. The interested party shall file a copy of the appeal with the Director and the procurement officer.
- B. The interested party shall file the appeal in writing and shall include the following information:
  - 1. The information prescribed in R19-3-554(B) including the identification of confidential information under R19-3-503.
  - 2. A copy of the decision of the procurement officer, and

3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C. The Director may consider any appeal that is not filed timely if:
  1. The interested party shows good cause, or
  2. The Director finds there is a good cause.
- D. The Director shall resolve appeals of solicitation decisions as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.

**R19-3-559. Notice of Appeal to the Director Regarding Protests**

- A. The procurement officer shall promptly give notice of the appeal to all offerors.
- B. The Director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R19-3-503.

**R19-3-560. Stay of Procurement During Appeal to Director**

- A. If a stay is issued under R19-3-555, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the Lottery.
- B. Following a review of the procurement officer's decision and the interested party's appeal, the Director may stay the procurement if the Director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the Lottery.

**R19-3-561. Online Solicitation Process Repealed**

~~The procurement officer may make a written determination that an online 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 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 Lottery; and~~
- ~~4. The scope, duration, and estimated total dollar value of the procurement need.~~

**R19-3-555-R19-3-561. Agency Report Regarding Protest Appeals**

- A. The procurement officer shall file a complete report on any appeal under A.R.S. Title 41, Chapter 6, Article 10 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 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 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.

**R19-3-562. Remedies by the Director**

If the Director sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination, or an award does not comply with procurement statutes and regulations, the Director shall implement remedies as provided in R19-3-557.

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**R19-3-563. Dismissal Before Hearing**

- A.** The Director shall dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
1. The appeal does not state a valid basis for protest.
  2. The appeal is untimely as prescribed under R19-3-558, or
  3. The appeal attempts to raise issues not raised in the protest.
- B.** The procurement officer shall notify the interested party in writing of a determination to dismiss an appeal before hearing.

**R19-3-556-R19-3-564. 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-R19-3-565. Procurement Officer's Decision Regarding Contract Claims**

- A.** If a claim cannot be resolved under ~~R19-3-556~~ R19-3-564, 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; and
  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 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)~~ R19-3-566(B) with the procurement officer within 30 days from the date you receive this decision."
- C.** If the procurement officer fails to issue a decision on a contract claim 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-R19-3-566. Appeals and Reports to the Director Regarding Contract Claims**

- 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-R19-3-567. 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.

**R19-3-562-R19-3-568. 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~~ R2-7-1009.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

Editor's Note: The following Notice of Proposed Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 210.)

[R13-14]

**PREAMBLE**

- |  |                                 |
|--|---------------------------------|
| <b><u>1. Article, Part, and Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
| R20-5-165  | New Section                     |
  
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. §§ 41-1003; 23-107(A)(1); 23-921  
Implementing statute: A.R.S. §§ 23-1041
  
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertained to the record of the proposed rule:**  
Notice of Rulemaking Docket Opening: 19 A.A.R. 203, February 8, 2013 (*in this issue*)
  
- 4. The agency's contact person who can answer questions about the rulemaking:**  
Name: Rachel C. Morgan, Attorney  
Address: Industrial Commission of Arizona - Legal Division  
800 W. Washington St.  
Phoenix, AZ 85007  
Telephone: (602) 542-5781  
Fax: (602) 542-6783  
E-mail: icallegaldivision@ica.state.az.us
  
- 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 Industrial Commission of Arizona ("Commission") is charged with the ministerial duty of adopting a maximum average monthly wage to be used in setting the average monthly wage in workers' compensation claims pursuant to A.R.S. § 23-1041(E). A.R.S. § 23-1041(E) was recently revised by the Arizona legislature in 2012. The statute, prior to its amendment, in pertinent part stated: "the commission shall, not later than August 1 of each calendar year, beginning August 1, 2009, adopt an amount that adjusts the amount from the prior year to reflect the annual percentage increase in the Arizona mean wage published by the department of economic security using the bureau of labor statistics occupational employment statistics data coded for all occupations for the prior calendar year." The recent amendment eliminated the aforementioned language and instead causes the statute to read: "the commission, not later than August 1 of each calendar year, beginning August 1, 2009, shall adopt an amount that adjusts the amount from the prior year to reflect the annual percentage increase in the bureau of labor statistics employment cost index for the prior calendar year." The amendment does not identify what employment cost index is to be used. This rulemaking is being initiated to add a new rule, R20-5-165, for the purpose of identifying the specific employment cost index to be used by the Commission in carrying out its statutory duty to annually adopt the maximum average monthly wage used in workers' compensation claims.
  
- 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:**  
The proposed rule does not diminish a previous grant of authority of a political subdivision of this state.
  
- 8. The preliminary summary of the economic, small business, and consumer impact:**  
Annual costs/revenues changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues.

Notices of Proposed Rulemaking

The Commission will bear minimal to moderate costs for promulgating and enforcing the rules. Costs for promulgating the rules include staff time to write, review, and direct the rules through the rulemaking process.

This rule merely clarifies the legislative amendment to A.R.S. § 23-1041(E) by providing the full title of the employment cost index referenced in the amended statute.

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

Name: Rachel C. Morgan, Attorney  
Address: Industrial Commission of Arizona - Legal Division  
800 W. Washington St.  
Phoenix, AZ 85007  
Telephone: (602) 542-5781  
Fax: (602) 542-6783  
E-mail: icalegaldivision@ica.state.az.us

**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:**

The Commission has scheduled an oral proceeding on the proposed rulemaking:

Date: Tuesday, March 19, 2013  
Location: 800 W. Washington St., Room 305  
Phoenix, AZ 85007  
Time: 9:00 a.m.

The close of record is Tuesday, March 19, 2013, 5:00 p.m.

A person may also submit written comments on the proposed rules no later than 5:00 p.m., Tuesday, March 19, 2013, to the individual listed in questions 4 and 9.

**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 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

Section

R20-5-165. Calculation of Maximum Average Monthly Wage

**ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE**

**R20-5-165. Calculation of Maximum Average Monthly Wage**

In using the Bureau of Labor Statistics Employment Cost Index to adopt the amount of an increase to the maximum average monthly wage under A.R.S. § 23-1041(E), the Commission shall use the *Bureau of Labor Statistics, Employment Cost Index for Wages and Salaries, for Civilian Workers, by Occupational Group and Industry, All Workers.*