



NOTICES OF PROPOSED RULEMAKING

This section of the Arizona Administrative Register contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same Register issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the Register within three weeks of filing. See the publication schedule in the back of each issue of the Register for more information.

Under the APA, 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)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency the promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

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

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

[R16-79]

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R19-3-501	Amend
R19-3-505	Amend
R19-3-506	Amend
R19-3-508	Amend
R19-3-509	Amend
R19-3-510	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
R19-3-526	Amend
R19-3-527	Amend
R19-3-528	Amend
R19-3-531	Amend
R19-3-532	Amend
R19-3-533	Repeal
R19-3-534	Amend
R19-3-535	Amend
R19-3-544	Amend
R19-3-545	Amend
R19-3-546	Amend
R19-3-547	Amend
R19-3-549	Amend
R19-3-553	Amend
R19-3-562	Amend

R19-3-563	Renumber
R19-3-563	New Section
R19-3-564	Renumber
R19-3-564	Amend
R19-3-565	Renumber
R19-3-566	Renumber
R19-3-566	Amend
R19-3-567	Renumber
R19-3-568	Renumber
R19-3-569	Renumber
R19-3-569	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(G)

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: 22 A.A.R. 582, March 11, 2016

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

Name: Pam DiNunzio
 Address: Arizona State Lottery
 4740 E. University Dr.
 Phoenix, AZ 85034
 Telephone: (480) 921-4489
 Fax: (480) 921-4488
 E-mail: pdinunzio@azlottery.gov
 Website: www.arizonalottery.com

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 conform to state procurement rule changes approved by Council and effective February 2015. A.R.S. § 41-2501(G) 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. Changes have also been made where necessary to clarify existing language and procedures after review by a representative of the State Procurement Office.

An exception from the rulemaking moratorium outlined in Executive Order 2015-01 was approved by the Governor’s Office on June 4, 2015.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, 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 and makes changes that conform to approved amendments to state procurement rules. This rulemaking does not change the Lottery’s procurement authority.

a. The conduct and its frequency of occurrence that the rule is designed to change: There is no specific conduct this rulemaking is designed to change. The intent is to create consistency with state procurement rules and to clarify procurement procedures.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

The harm is that discrepancies in procedures will exist, detracting from clarity. If the rules are not changed, it may create confusion for vendors as a result of inconsistencies between Lottery rules and state rules that govern procurement procedures.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

Not applicable. There is no specific targeted conduct prompting the rule amendments.

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(G) 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(G) 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. In FY15, the expenditure for procurement contracts was approximately \$34.7 million, of which about 54% (\$18.6 million dollars) was expended on contracts awarded under the Lottery procurement rules.

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 appropriated budget allocation for operating expenses. The rule amendments are primarily administrative and conforming 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 draw game services and was not completely unexpected due to the multi-million dollar value of the contract. The protest was unsuccessful.

The benefits of this rulemaking are greater efficiency in Lottery procurements and consistency with state procurement rules. In addition, the agency benefits from improved procedures related to approval authority as reflected in amendments to sections R19-3-544, R19-3-545, R19-3-546, and R19-3-549. The State Procurement Office provided input for strengthening these provisions, which will serve to protect the Lottery’s interest in procurement actions. In general, the Lottery will benefit from updated, consistent rules that govern procurement processes, thus reducing the potential for protests and appeals, and improving rule clarity and ease of use.

Impact on Other Agencies: The rules have no identifiable impact on other agencies.

Full-Time Employees: 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.

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 and consistency with respect to procurement procedures. The proposed amendments should improve efficiency and provide better understanding and ease of use as compared to the existing rules. Consistent with state procurement amendments, key provisions include requiring a best and final offering if negotiations are conducted, adjusting the quotations threshold requirement to \$10,000 from \$5,000, changing the time frame for publication of contract awards from 10 day to 3 days, and introducing an option for informal settlement conferences during a procurement appeal. These provisions serve to improve the efficiency and transparency of the procurement process. Expanded levels of Lottery procurement oversight and approvals will serve to protect the interests of potential suppliers, in addition to the Lottery. Businesses will also benefit from consistency between Lottery procurement rules and 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 is not expected to 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. Requests for quotation must be distributed to small businesses only, and except in specific instances, contracts must be awarded to a small business. In FY15, small businesses accounted for about \$13.5 million of expended funds. Small businesses will also benefit from consistency between Lottery procurement rules and state procurement rules.

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

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

c. A description of methods that may be used to reduce the impact on small businesses and reasons for the agency's decision to use or not use each method.

Not applicable to this rulemaking; the rules are expected to have a positive impact on small businesses. Requests for quotation must be disseminated specifically to small businesses, and unless specific exceptions apply, the contract must be awarded to a small business.

6. 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 this rulemaking. Private persons and consumers will benefit from lower costs as a result of a more efficient procurement process and the ability to secure the best value for the Lottery.

7. Probable effect on state revenues.



This rulemaking is not anticipated to have any immediate measurable impact on state revenues or expenses. However, efficient procurement procedures will help ensure the best long-term value to the state when purchasing goods and services.

8. *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(G) 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.

9. *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:**

Name: Pam DiNunzio
 Address: Arizona State Lottery
 4740 E. University Dr.
 Phoenix, AZ 85034
 Telephone: (480) 921-4489
 Fax: (480) 921-4488
 E-mail: pdinunzio@azlottery.gov
 Website: www.arizonalottery.com

10. **The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

Date: June 17, 2016
 Time: 10:00 a.m.
 Location: Arizona Lottery
 4740 E. University Dr.
 Phoenix, AZ 85034
 Nature: Oral Proceeding
 The close of record is 5:00 p.m. on June 17, 2016 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:**

There is no corresponding federal law that is applicable to the subject matter. The rules are based on state law

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:**

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

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 5. PROCUREMENTS

Section

- R19-3-501. Definitions
- R19-3-505. 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
- R19-3-510. Pre-Offer Conferences
- 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
- R19-3-521. Bid Evaluation
- R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers
- R19-3-524. ~~Final Proposal Offer Revisions and Best and Final Offers~~
- R19-3-525. Evaluation of Proposal Offers
- R19-3-526. Responsibility Determinations
- R19-3-527. Bid Contract Award
- R19-3-528. Proposal Contract 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~~ Repealed
- R19-3-534. Quotation Contract Award
- R19-3-535. Sole Source Procurements
- R19-3-544. Contract Change Orders and Amendments
- R19-3-545. Multi-term Contracts
- R19-3-546. Terms and Conditions
- R19-3-547. Mandatory Statewide Contracts
- R19-3-549. Conflict of Interest
- R19-3-553. Defective Cost or Pricing Data
- R19-3-562. Remedies by the Director
- R19-3-563. Informal Settlement Conference
- ~~R19-3-563~~~~R19-3-564~~. Dismissal Before Hearing
- ~~R19-3-564~~~~R19-3-565~~. Controversies Involving Contract Claims Against the Lottery
- ~~R19-3-565~~~~R19-3-566~~. Procurement Officer's Decision Regarding Contract Claims
- ~~R19-3-566~~~~R19-3-567~~. Appeals and Reports to the Director Regarding Contract Claims
- ~~R19-3-567~~~~R19-3-568~~. Controversies Involving Lottery Claims Against the Contractor
- ~~R19-3-568~~~~R19-3-569~~. Guidance

ARTICLE 5. PROCUREMENTS

R19-3-501. Definitions

In this Article, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "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.
3. "Best and Final Offer" means a revision to an offer submitted after negotiations are completed that contain the offeror's most favorable terms for price, service, and products to be delivered.
- ~~3-4~~ "Best interests of the Lottery" means advantageous to the Lottery.
- ~~4-5~~ "Bid" means an offer in response to solicitation.
- ~~5-6~~ "Business" means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.



- ~~6.7.~~ “Change order” means a ~~document, written order that is signed by the Director, which procurement officer and that directs the contractor to make a change that changes that the changes clause of the contract authorizes the Director procurement officer to order.~~
- 7. “Competitive range” 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.
 - e. That the proposal is technically acceptable as submitted.
- 8. “Contract” means an agreement, regardless of what it is called, for the procurement of Lottery equipment, tickets, and related materials.
- 9. “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.
- 10. “Contractor” means a person who has a contract with the Lottery.
- 11. “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.
- 12. “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.
- 13. “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.
- 14. “Day” means a calendar day and is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
- 15. “Defective data” means data that is inaccurate, incomplete, or outdated.
- 16. “Director” means the Executive Director of the State Lottery.
- 17. “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.”
- 18. “Filed” means delivered to the ~~Arizona Lottery, 4740 E. University Dr., Phoenix, AZ 85034. A time/date stamp affixed to a document by the procurement officer or the procurement officer’s delegate when the document is delivered determines the time of filing~~ procurement officer or to the Director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
- 19. “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.
- 20. “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. “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. “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. “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. “Multi-step sealed bidding” means a two-phase bidding process consisting of a technical phase and a price phase.
- 25. “Negotiation” means an exchange or series of exchanges, including a request for a best and final offer, between the Lottery and an offeror or contractor that 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. “Offer” means a response to a solicitation.
- 27. “Offeror” means a person who responds to a solicitation.
- 28. “Person” means any corporation, limited liability company, limited liability partnership, partnership, business, individual, union, committee, club, other organization, or group of individuals.
- 29. “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. “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. “Procurement file” means the official records file of the 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~~ Offer revisions and best and final offers;
 - f. Discussions;
 - g. Clarifications;
 - h. Final evaluation reports; and
 - i. Additional information, if requested by the procurement officer.
32. “Proposal” means an offer submitted in response to a solicitation.
33. “Prospective offeror” means a person that expresses an interest in a specific solicitation.
34. “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.
35. “Purchase request” or “purchase requisition” means a document or electronic transmission in which the Director requests that a contract be entered into for a specific need and may include a description of a requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information needed to make a written determination required by this Article.
36. “Request for proposals” means all documents, whether attached or incorporated by reference, that are used to solicit proposals in accordance with R19-3-509.
37. “Responsible bidder or offeror” means a person who has the capability to perform contract requirements and the integrity and reliability necessary to ensure a good faith performance.
38. “Responsive bidder or offeror” means a person who submits a bid that conforms in all material respects to the invitation for bids or request for proposals.
39. “Reverse auction” means a procurement method in which offerors are invited to bid on specified goods or services through 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.
40. “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.
41. “Significant procurement role”:
- a. Means any role that includes any of the following duties:
 - i. Participating in the development of a procurement.
 - ii. Participating in the development of an evaluation tool.
 - iii. Approving a procurement or an evaluation tool.
 - iv. Soliciting quotes greater than ten thousand dollars for the provision of materials or services.
 - v. Serving as a technical advisor or an evaluator who evaluates a procurement.
 - vi. Recommending or selecting a vendor that will provide materials or services to the Lottery.
 - vii. Serving as a decision maker or designee on a protest or an appeal by a party regarding a Lottery procurement selection or decision.
 - b. Does not include making a decision on developing specifications and the scope of work for a procurement if the decision is based on the application of commonly accepted industry standards or known published standards of the Lottery as applied to the project, services, goods, or materials.
- 41-42. “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.
- 42-43. “Solicitation” means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the Lottery to invite a person to submit an offer.
- 43-44. “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.
- 44-45. “Subcontractor” means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the Lottery.



45-46. "Suspension" means an action taken by the Director of the Department of Administration under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.

46-47. "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.

47-48. "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.

R19-3-505. Prospective Suppliers List

- A. The procurement officer ~~shall compile and maintain~~ may refer to a prospective suppliers list maintained by the state procurement administrator as a resource for selection of suppliers. ~~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~~ choose to compile and maintain a Lottery prospective suppliers list as a resource for selection of suppliers.

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. §§ 5-559 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. ~~The procurement officer shall determine in writing that an invitation for bid is not practicable or advantageous to the Lottery before soliciting for offers for a competitive sealed proposal. 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.C. 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 equivalent 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 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 equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
 - c. Any other specification requirements specific to the solicitation.
3. Terms and Conditions, including:
- a. Whether the contract is to include an extension option, and
 - b. Any other contract terms and conditions.



R19-3-510. Pre-Offer Conferences

The procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted for a solicitation, it shall be ~~not less than seven days before the offer due date and time, unless the procurement officer makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre offer conference are not amendments to the solicitation within a reasonable time prior to the offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R19-3-511.~~

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.
- 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. 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, and any other relevant information as determined by the procurement officer. ~~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.
- E. Except for the information identified in 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

- A. 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 R19-3-550,
 - 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.
- B. If the procurement officer awards a contract for a solicitation under (A)(1), the award shall comply with R19-3-527 for a bid solicitation and R19-3-528 for a proposal solicitation.

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 involves a minor informality or 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 susceptible 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~~ may consider life cycle costs and application benefits when evaluating offers for the procurement of ~~material or services, information systems, and telecommunication systems~~ materials.
- 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 procurement officer shall confirm the negotiations in writing and provide the document 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~~ best and final offer due date and time by submitting a written request to the procurement officer.

R19-3-524. Final Proposal Offer Revisions and Best and Final Offers

- A. The procurement officer ~~shall~~ may 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-responsive under R19-3-526 to an offer~~. The procurement officer shall include in the written request:
 - 1. The date, time, and place for submission of ~~final proposal offer~~ revisions; and
 - 2. A statement that if offerors do not submit a written notice of withdrawal or a written ~~final proposal offer~~ revision, their immediate previous written ~~proposal revision offer~~ will be accepted as their final ~~proposal revision offer~~.



B. The procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted, however it is not mandatory to conduct negotiations prior to requesting a best and final offer. The procurement officer shall include in the written request:

1. The date, time, and place for submission of best and final offer; and
2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.

~~**B.C.**~~ The procurement officer shall request written ~~final proposal revisions~~ best and final offers 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.D.**~~ If an apparent mistake, relevant to the award determination, is discovered after opening of ~~final proposal revisions~~ best and final offers, the procurement officer shall contact the offeror for written confirmation. The procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information,
 - b. A request for correction including the corrected offer or a request for withdrawal, and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

~~**D.E.**~~ An offeror who discovers a mistake in their ~~final proposal revision~~ best and final offer 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.F.**~~ In response to a request made under subsections ~~(C)~~ (D) or ~~(D)~~ (E), 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~~ best and final offer, the procurement officer shall make a written determination that the most recent written ~~proposal revision~~ best and final offer submitted is the ~~final proposal revision~~ final best and final offer.

R19-3-525. Evaluation of Proposal Offers

A. The procurement officer shall evaluate offers and ~~final proposal revisions~~ best and final offers 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.

R19-3-526. Responsibility Determinations

A. The procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.

B. The procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:

1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
2. The offeror's record of performance and integrity;
3. Whether the offeror has been debarred or suspended;
4. Whether the offeror is legally qualified to contract with the Lottery;
5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
6. Whether the offeror meets the responsibility criteria specified in the solicitation.

C. If the procurement officer determines an offeror is nonresponsible, the procurement officer shall promptly send a determination to the offeror stating the basis for the determination, except when notification to the offeror would compromise the Lottery's ability to negotiate with other offerors. The procurement officer shall file a copy of the determination in the procurement file.

D. The procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.

E. For the offeror awarded a contract, the procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

R19-3-527. Bid Contract Award

- A. The procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.
- B. The procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.
- C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D. After an award becomes effective and binding, the procurement officer shall return any bid security provided by the offeror.
- E. Within ~~40~~ 3 days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

R19-3-528. 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 R19-3-550 through R19-3-553.~~

~~C.~~ B. 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.~~ C. 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.~~ D. The procurement officer shall notify all offerors of an award that has become effective and binding.

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

~~G.~~ F. Within ~~40~~ 3 days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

R19-3-531. 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~~ R19-3-532 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, \$10,000.00, or
4. ~~The purchase is made as a sole source procurement, or~~
- ~~5.~~ 4. 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~~ \$10,000 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 procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses registered on the prospective suppliers list.

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

- 1. The purchase has been unsuccessfully competed under ~~R19-3-533~~ Subsection (B) of this Section, including failure to obtain fair and reasonable prices; or
- 2. The procurement officer has made a written determination that less than three small businesses are registered on the prospective suppliers list, or
- ~~2-3.~~ The procurement officer has made a written determination prior to issuing a request for quotation that restricting the procurement to small business is not practical under the circumstances.

R19-3-533. Request for Quotation Issuance Repealed

~~The procurement officer shall issue the request for quotation by 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.~~

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 determine if the price is fair and reasonable, and in the best interest of the Lottery to award a contract, and place the determination in the procurement file. If time permits, the procurement officer may initiate a second request for quotation if it is reasonable to believe that additional responses will be received.~~
- 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 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. This Section applies only to sole source procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535.

~~B.C.~~ 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 R19-3-550, and
- 5. A description of efforts made to seek other sources.

~~C.D.~~ The procurement officer shall post the request on the Lottery ~~web site~~ website and send notice to registered vendors on the state’s electronic system to invite comments on the sole-source request for 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.E.~~ If the sole-source procurement is determined, the procurement officer shall negotiate a contract advantageous to the Lottery.

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

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 or aggregate change orders or amendments of a contract not covered under subsection (A) that exceeds \$100,000 25% of the original contract amount may be executed only if approved by the

budget manager and 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 R19-3-550.

- 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 and the Lottery Commission pre-approves the extended contract period. 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.

R19-3-546. Terms and Conditions

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

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 for all non-Lottery specific materials and services, unless an off-contract request is approved by the state procurement administrator.~~

R19-3-549. Conflict of Interest

- A. A person preparing or assisting in the preparation of specifications, plans, or scopes of work shall not 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. If the procurement officer is the individual with the restriction, the Director may waive the restriction set forth in subsection (A) if the Director determines in writing that the rule's application would not be in the Lottery's best interest. If the Director is the person with the restriction, the restriction may be waived by a determination of the office of the Governor.

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 ~~R19-3-564~~ R19-3-565 through ~~R19-3-566~~ R19-3-567. 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.

R19-3-562. 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 rules, the Director shall implement remedies as provided in R19-3-557 or R19-3-563.

R19-3-563. Informal Settlement Conference

In any protest, claim or debarment proceeding, the Director may request to hold an informal settlement conference with all interested parties. The conference may be held at any time prior to a final administrative decision. If an informal settlement conference is held, a person with the authority to act on behalf of the interested party must be present. The procurement officer shall notify the interested parties in writing that statements, either written or oral, made at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent



administrative or judicial hearing. Should any interested party choose not to participate in an informal settlement conference, the Director, or the Director's designee, in his or her discretion, may conduct the conference with those interested parties that appear, or reschedule the conference, or terminate the conference. If the informal settlement conference results in a full settlement agreement between all interested parties, that agreement shall be reduced to writing, signed by the interested parties, and entered as the final administrative decision in the proceeding. If the interested parties do not reach agreement on all matters at issue in the proceedings, but do agree to resolve one or some of the issues, that partial agreement shall be reduced to writing, be signed by the interested parties, and bind the interested parties through the remainder of the proceedings. If the Director, or the Director's designee, participates in an informal settlement conference, the Director, or the Director's designee, may not participate in or attempt to influence the outcome of the final administrative decision. Further, in making a final administrative decision, the Director shall not give any weight to whether or not an informal settlement conference has been held, or to any consideration of the perceived success or failure of the informal settlement conference.

~~R19-3-563~~R19-3-564. Dismissal Before Hearing

- A. The Director ~~shall~~ may 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.

~~R19-3-564~~R19-3-565. 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.

~~R19-3-565~~R19-3-566. Procurement Officer's Decision Regarding Contract Claims

- A. If a claim cannot be resolved under ~~R19-3-564~~ R19-3-565, 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 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 ~~R19-3-566(B)~~ R19-3-567(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.

~~R19-3-566~~R19-3-567. 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.

~~R19-3-567~~.R19-3-568. 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.

~~R19-3-568~~.R19-3-569. 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 R2-7-1009~~ 2 A.A.C. 7, including, but not limited to a procurement utilizing a cooperative contract.