



# Arizona Administrative REGISTER

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~ Administrative Register Contents ~

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**Information** ..... 586

**Rulemaking Guide** ..... 587

**RULES AND RULEMAKING**

**Proposed Rulemaking, Notices of**

        4 A.A.C. 33 Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers. . . . . 589

**Final Exempt Rulemaking, Notices of**

        7 A.A.C. 2 State Board of Education ..... 595

        7 A.A.C. 2 State Board of Education ..... 597

**OTHER AGENCY NOTICES**

**Docket Opening, Notices of Rulemaking**

        9 A.A.C. 16 Department of Health Services - Occupational Licensing. . . . . 626

**Public Information, Notices of**

        Department of Environmental Quality - Safe Drinking Water. . . . . 628

**GOVERNOR'S OFFICE**

**Governor's Executive Order 2020-02**

        Moratorium on Rulemaking to Promote Job Creation and Economic Development; Implementation of Licensing Reform Policies ..... 630

**INDEXES**

    Register Index Ledger ..... 632

    Rulemaking Action, Cumulative Index for 2020 ..... 633

    Other Notices and Public Records, Cumulative Index for 2020 ..... 635

**CALENDAR/DEADLINES**

    Rules Effective Dates Calendar ..... 636

    Register Publishing Deadlines ..... 638

**GOVERNOR'S REGULATORY REVIEW COUNCIL**

    Governor's Regulatory Review Council Deadlines. . . . . 639

# From the Publisher

## ABOUT THIS PUBLICATION

The authenticated pdf of the *Administrative Register* (A.A.R.) posted on the Arizona Secretary of State's website is the official published version for rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains notices of rules terminated by the agency and rules that have expired.

## ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rulemaking activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA, and other state statutes.

New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

## WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE REGISTER?

The *Arizona Administrative Code* (A.A.C.) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The authenticated pdf of *Code* chapters posted on the Arizona Secretary of State's website are the official published version of rules in the A.A.C. The *Code* is posted online for free.

## LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking

Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

# Arizona Administrative REGISTER

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This publication is available online for free at [www.azsos.gov](http://www.azsos.gov).

**ADMINISTRATIVE CODE**  
A price list for the *Arizona Administrative Code* is available online. You may also request a paper price list by mail. To purchase a paper Chapter, contact us at (602) 364-3223.

**PUBLICATION DEADLINES**  
Publication dates are published in the back of the *Register*. These dates include file submittal dates with a three-week turnaround from filing to published document.

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# Participate in the Process

## Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

## Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

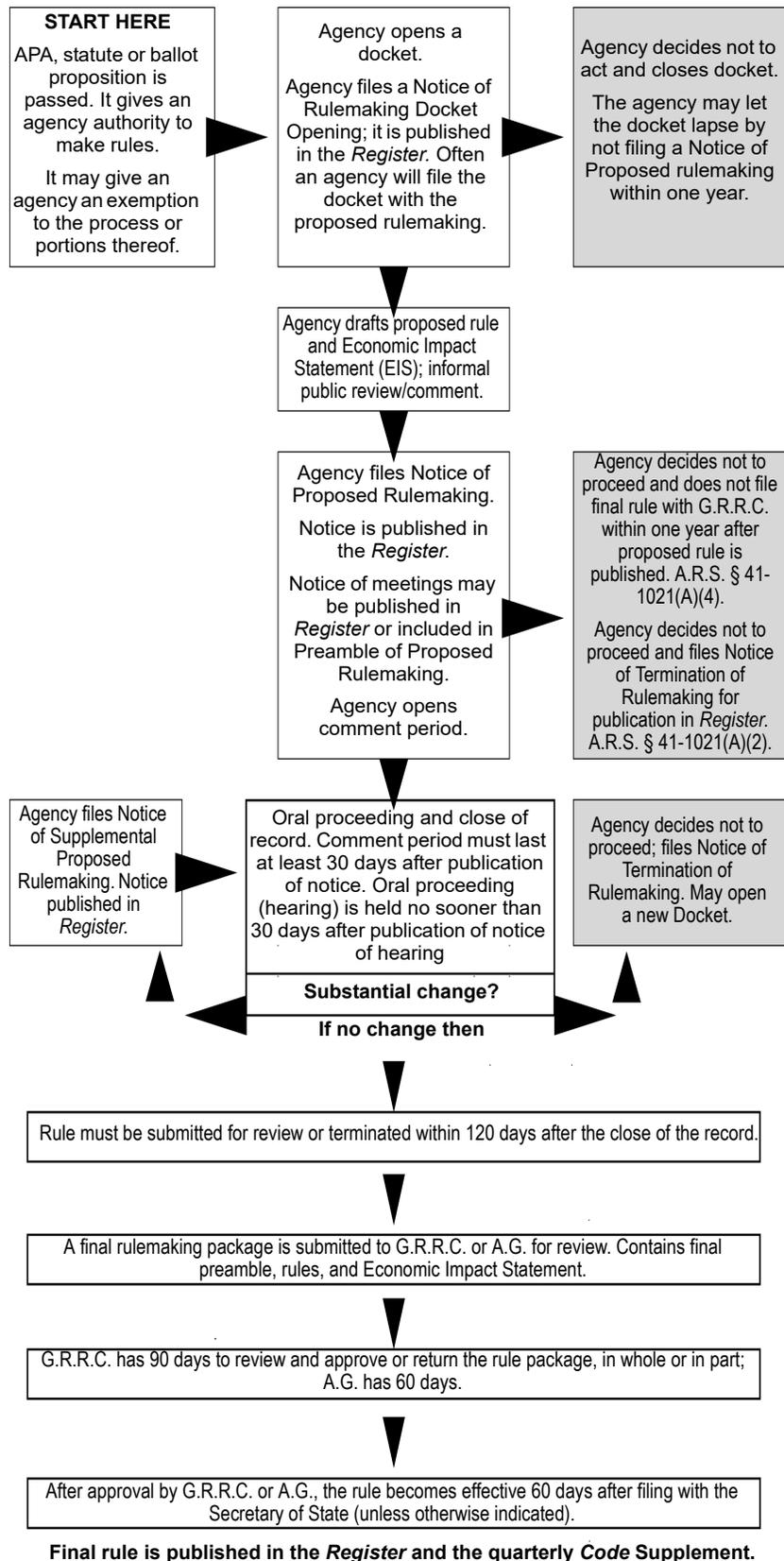
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

## Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

# Arizona Regular Rulemaking Process



## Definitions

**Arizona Administrative Code (A.A.C.):** Official rules codified and published by the Secretary of State's Office. Available online at [www.azsos.gov](http://www.azsos.gov).

**Arizona Administrative Register (A.A.R.):** The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at [www.azsos.gov](http://www.azsos.gov).

**Administrative Procedure Act (APA):** A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at [www.azleg.gov](http://www.azleg.gov).

**Arizona Revised Statutes (A.R.S.):** The statutes are made by the Arizona State Legislature during a legislative session. They are compiled by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at [www.azleg.gov](http://www.azleg.gov).

**Chapter:** A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

**Close of Record:** The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

**Code of Federal Regulations (CFR):** The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

**Docket:** A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

**Economic, Small Business, and Consumer Impact Statement (EIS):** The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

**Governor's Regulatory Review (G.R.R.C.):** Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

**Incorporated by Reference:** An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

**Federal Register (FR):** The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

**Session Laws or "Laws":** When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.," and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at [www.azleg.gov](http://www.azleg.gov).

**United States Code (U.S.C.):** The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

## Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – *Administrative Procedure Act*

A.R.S. – *Arizona Revised Statutes*

CFR – *Code of Federal Regulations*

EIS – *Economic, Small Business, and Consumer Impact Statement*

FR – *Federal Register*

G.R.R.C. – *Governor's Regulatory Review Council*

U.S.C. – *United States Code*

## About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.



**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 that 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 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS**

[R20-48]

**PREAMBLE**

- |   |                                 |
|---|---------------------------------|
| <b><u>1. Article, Part, or Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
| R4-33-702   | Amend                           |
| R4-33-703.1   | 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. § 36-446.03(A)  
 Implementing statute: A.R.S. §§ 36-446.03(O) and 36-446.15
- 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: 26 A.A.R. 17, January 3, 2020
- 4. The agency's contact person who can answer questions about the rulemaking:**  
 Name: Allen Imig, Executive Director  
 Address: Board of Examiners of Nursing Care Administrators and Assisted Living Facility Managers  
 1740 W. Adams St., Suite 2490  
 Phoenix, AZ 85007  
 Telephone: (602) 364-2273  
 Fax: (602) 542-8316  
 E-mail: allen.imig@nciabd.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:**  
 Under Laws 2019, Chapter 280, the legislature enacted A.R.S. § 36-446.15, indicating an individual who complies with the AHC-CCS training and competency requirements for an in-home direct care worker satisfies the Board's training requirements for an assisted living facility caregiver except for training regarding medication administration. The legislation also instructed the Board to make rules for assisted living facility caregivers consistent with the training, competency, and test methodology standards developed by the AHCCCS for in-home direct care workers. The Board is to complete the rulemaking by June 1, 2020. An exemption from Executive Order 2019-01 was provided for this rulemaking by Emily Rajakovich, of the Governor's Office, by e-mail dated September 19, 2019.
- 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 Board does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- 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:**  
 The Board expects the rulemaking to have minimal economic impact because it simply makes the rules consistent with the legislative instruction at A.R.S. § 36-446.03(O). The economic impact of the legislation may be significant for owners of Board-



approved assisted living facility caregiver training programs. Owners of Board-approved assisted living facility caregiver training programs may experience a negative economic impact if individuals wanting to be certified as an assisted living facility caregiver obtain initial training through an AHCCCS-approved direct care worker training and testing program rather than a Board-approved assisted living facility caregiver training program and come to the Board-approved assisted living facility caregiver training program only for training regarding medication administration.

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

Name: Allen Imig, Executive Director  
Address: Board of Examiners of Nursing Care Administrators and Assisted Living Facility Managers  
1740 W. Adams St., Suite 2490  
Phoenix, AZ 85007  
Telephone: (602) 364-2273  
Fax: (602) 542-8316  
E-mail: allen.imig@nciabd.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:**

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

Date: Tuesday, May 5, 2020  
Time: 9:00 a.m.  
Location: 1740 W. Adams  
Board Meeting Room C  
Phoenix, AZ 85007

**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:**

Under A.R.S. § 36-446.03(O), the rulemaking is to be completed by June 1, 2020.

**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 Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board's statutes to each person that is qualified by statute and rule.

**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 federal law specifically applicable to this rulemaking.

**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 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS**

**ARTICLE 7. ASSISTED LIVING FACILITY CAREGIVER TRAINING PROGRAMS**

Section

- R4-33-702. Minimum Standards for Assisted Living Facility Caregiver Training Program
- R4-33-703.1 Minimum Standards and Curriculum for an Assisted Living Facility Caregiver Medication Management Training Program

**ARTICLE 7. ASSISTED LIVING FACILITY CAREGIVER TRAINING PROGRAMS**

**R4-33-702. Minimum Standards for Assisted Living Facility Caregiver Training Program**

- A. Organization and administration. The owner of an assisted living facility caregiver training program shall:
  - 1. Provide the Board with a written description of the training program that includes:
    - a. Length of the training program in hours:
      - i. Number of hours of classroom instruction,
      - ii. Number of hours of skills training, and
      - iii. Number of hours of distance learning, and
    - b. Educational goals that demonstrate the training program is consistent with state requirements;
  - 2. Develop and adhere to written policies and procedures regarding:
    - a. Attendance. Ensure that a student receives at least 62 hours of instruction;



- b. Grading. Require a student to attain at least 75 percent on each ~~theoretical~~ knowledge examination or 75 percent on a comprehensive ~~theoretical~~ knowledge examination;
  - c. Reexamination. Inform students that a reexamination:
    - i. Addresses the same competencies examined in the original examination,
    - ii. Contains items different from those on the original examination, and
    - iii. Is documented in the student's record;
  - d. Student records. Include the following information:
    - i. Records maintained,
    - ii. Retention period for each record,
    - iii. Location of records,
    - iv. Documents required under subsections (G)(1) and (G)(2), and
    - v. Procedure for accessing records and who is authorized to access records;
  - e. Student fees and financial aid, if any;
  - f. Withdrawal and dismissal;
  - g. Student grievances including a chain of command for disputing a grade;
  - h. Admission requirements including any criminal background or drug testing required;
  - i. Criteria for training program completion; and
  - j. Procedure for documenting that a student has received notice of the fingerprint clearance card requirement before the student is enrolled;
3. Date each policy and procedure developed under subsection (A)(2), review within one year from the date made and every year thereafter, update if necessary, and date the policy or procedure at the time of each review;
  4. Provide each student who completes the training program with evidence of completion, within 15 days of completion, which includes the following:
    - a. Name of the student;
    - b. Name and classroom location of the training program;
    - c. Number of classroom, skills training, and distance learning hours in the training program;
    - d. Date on which the training program was completed;
    - e. Board's approval number of the training program; and
    - f. Signature of the training program owner, administrator, or instructor;
  5. Provide the Board, within 15 days of completion, the following information regarding each student who completed the training program:
    - a. Student's name, date of birth, Social Security number, address, and telephone number;
    - b. Student's examination score as provided by a Board-approved provider;
    - c. Name and classroom location of the training program;
    - d. Number of classroom hours in the training program;
    - e. Number of distance learning hours in the training program;
    - f. Number of skills training hours in the training program;
    - g. Date on which the training program was completed; and
    - h. Board's approval number of the training program; and
  6. Execute and maintain under subsections (G)(1) and (G)(2) the following documents for each student:
    - a. A skills checklist containing documentation the student achieved competency in the assisted living facility caregiver skills listed in R4-33-703(C),
    - b. A copy of the current food-handler's card issued to the student by the county in which the student lives, and
    - c. An evaluation form containing the student's responses to questions about the quality of the instructional experiences provided by the training program.
- B.** Program administrator responsibilities. The owner of an assisted living facility caregiver training program shall ensure that a program administrator performs the following responsibilities:
1. Supervises and evaluates the training program,
  2. Uses only instructors who are qualified under subsection (C), and
  3. Makes the written policies and procedures required under subsection (A)(2) available to each student on or before the first day of the training program;
- C.** The owner of an assisted living facility caregiver training program shall ensure that a program instructor is qualified under subsection (C)(1), (C)(2), or (C)(3):
1. Is a certified assisted living facility manager:
    - a. Holds an assisted living facility manager certificate that is in good standing and issued under A.R.S. Title 36, Chapter 4;
    - b. Has held the assisted living facility manager certificate referenced in subsection (C)(1)(a) for at least two years;
    - c. Has not been subject to disciplinary action against the assisted living facility manager certificate during the last two years; and
    - d. Has at least two years' experience within the last five years as an assisted living facility manager of record immediately before becoming a training program instructor;
  2. Is a licensed health professional:
    - a. Holds a license that is in good standing and issued under A.R.S. Title 32, Chapter, 13, 15, 17, or 25;
    - b. Has held the health professional license referenced in subsection (C)(2)(a) for at least two years;
    - c. Has not been subject to disciplinary action against the health professional license during the last two years; and
    - d. Has at least two years' experience within the last five years in management, operation, or training in assisted living immediately before becoming a training program instructor; or



3. Other qualified individual:
  - a. Holds at least a baccalaureate degree in a health-related field from an accredited college or university;
  - b. Has not been subject to disciplinary action against any professional or occupational license or certificate during the last two years; and
  - c. Has at least two years' experience within the last five years in management, operation, or training in assisted living immediately before becoming a training program instructor.
- D. The owner of an assisted living facility caregiver training program shall ensure that a program instructor performs the following responsibilities:
  1. Plans each learning experience,
  2. Accomplishes educational goals of the training program and lesson objectives,
  3. Enforces a grading policy that meets the requirement specified in subsection (A)(2)(b),
  4. Requires satisfactory performance of all critical elements of each assisted living facility caregiver skill specified under R4-33-703(C),
  5. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently,
  6. Is present in the classroom during all instruction,
  7. Uses a maximum of 20 hours of distance learning,
  8. Supervises health professionals who assist in providing training program instruction, and
  9. Ensures that a health professional who assists in providing training program instruction:
    - a. Is licensed or certified as a health professional,
    - b. Has at least one year of experience in the field of licensure or certification, and
    - c. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.
- E. Skill training requirements. The owner of an assisted living facility caregiver training program shall:
  1. Provide each student with at least 12 hours of instructor-supervised skills training, and
  2. Ensure that each student develops skill proficiency in the subjects listed in R4-33-703(C).
- F. Instructional and educational resources. The owner of an assisted living facility caregiver training program shall provide, or provide access to, the following instructional and educational resources adequate to implement the training program for all students and staff:
  1. Current reference materials related to the level of the curriculum;
  2. Equipment in functional condition for simulating resident care, including:
    - a. Patient bed, over-bed table, and nightstand;
    - b. Privacy curtain and call bell;
    - c. Thermometers, stethoscopes, including a teaching stethoscope, blood-pressure cuff, and balance scale;
    - d. Hygiene supplies, elimination equipment, drainage devices, and linens;
    - e. Hand-washing equipment and clean gloves; and
    - f. Wheelchair, gait belt, walker, anti-embolic hose, and cane;
  3. Computer in good working condition;
  4. Audio-visual equipment and media; and
  5. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;
- G. Records. The owner of an assisted living facility caregiver training program shall:
  1. Maintain the following training program records for three years:
    - a. Curriculum and course schedule for each student cohort;
    - b. Results of state-approved written examination and skills checklist;
    - c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and
    - d. Copy of all Board reports, applications, or correspondence related to the training program; and
  2. Maintain the following student records for three years:
    - a. Name, date of birth, and Social Security number;
    - b. Completed skills checklist;
    - c. Attendance record including a record of any make-up class sessions;
    - d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken;
    - e. Documentation from the program instructor indicating the:
      - i. Number of skills training hours completed by the student,
      - ii. Student performance during the skills training, and
      - iii. Verification of distance learning hours completed by the student; and
    - f. Copy of the evidence of completion issued to the student as required under subsection (A)(4);
- H. Examination and evaluation requirements for students. The owner of an assisted living facility caregiver training program shall ensure each student in the training program:
  1. Takes an examination that covers each of the subjects listed in R4-33-703(C) and passes each examination using the standard specified in subsection (A)(2)(b);
  2. Is evaluated and determined to possess the practical skills listed in R4-33-703(C);
  3. Passes, using the standard specified in subsection (A)(2)(b), a final examination approved by the Board and given by a Board-approved provider; and
  4. Does not take the final examination referenced in subsection (H)(3) more than three times. If a student fails the final examination referenced in subsection (H)(3) three times, the student is able to obtain evidence of completion only by taking the assisted living facility caregiver training program again;



- I. Examination passing standard. The owner of an assisted living facility caregiver training program shall attain an annual first-time passing rate of 70 percent for all students who take the examination specified under subsection (H)(3). The Board may waive this requirement for a program if fewer than 10 students took the examination during the year.
- J. Periodic evaluation. The owner of an assisted living facility caregiver training program shall allow a representative of the Board or a state agency designated by the Board to conduct:
  - 1. A scheduled evaluation:
    - a. Before initial approval of the training program as specified under R4-33-704(D),
    - b. Before renewal of the training program approval as specified under R4-33-705(C), and
    - c. During a time of correction as specified under R4-33-706(B); and
  - 2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board;
- K. Notice of change. The owner of an assisted living facility caregiver training program shall provide the documentation and information specified regarding the following changes within 10 days after making the change:
  - 1. New training program administrator. Name and license number;
  - 2. New instructor. Name, license number, and evidence of being qualified under subsection (C);
  - 3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;
  - 4. Change in classroom location. Address of new location, if applicable, and description of the new classroom; and
  - 5. For a training program that is based within an assisted living facility:
    - a. Change in name of the facility. Former and new name of the assisted living facility; and
    - b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.
- L. ~~Reduced hours~~ Medication management training program. The owner of an assisted living facility caregiver training program may provide a ~~reduced hours~~ medication management training program for a student who, at the time of admission, is in good standing and a CNA, LNA, or DCW.
  - ~~1. The owner of an assisted living facility caregiver training program shall ensure a reduced hours the medication management training program provides the following:~~
    - ~~a. For a CNA or LNA, the classroom instruction listed in subsection R4-33-703(C)(14) and meets the standards in R4-33-703.1; and~~
    - ~~b. For a DCW, the classroom instruction listed in subsections R4-33-703(C)(1) through (C)(8), (C)(11), (C)(12), and (C)(14).~~
  - 2. ~~The owner of an assisted living facility caregiver training program shall ensure a CNA, LNA, or DCW in a reduced hours training program or a CMA complies fully with the examination and evaluation requirements in subsection (H).~~

**R4-33-703.1. Minimum Standards and Curriculum for an Assisted Living Facility Caregiver Medication Management Training Program**

- A. An assisted living facility caregiver medication management training program may be established by:
  - 1. The owner or manager of an assisted living facility, or
  - 2. The owner of an assisted living facility caregiver training program.
- B. A person under subsection (A) may offer an assisted living facility caregiver medication management training program to: ~~a CNA or LNA who is in good standing.~~
  - 1. A CNA who is in good standing and whose certification by the Arizona Board of Nursing under A.R.S. § 32-1645 is verified;
  - 2. An LNA who is in good standing and whose licensure by the Arizona Board of Nursing under A.R.S. § 32-1645 is verified; and
  - 3. A DCW who is in good standing and whose training, including training about caregiving fundamentals and aging and physical disabilities, and testing record is verified through the AHCCCS online database.
- C. A person under subsection (A) that offers an assisted living facility caregiver medication management training program to individuals specified under subsection (B) shall ensure the assisted living facility caregiver medication management training program:
  - 1. Consists of at least the 16 classroom hours specified under R4-33-703(C)(14);
  - 2. Is not taught by distance learning;
  - 3. Is taught by a health professional who holds a license in good standing and issued under A.R.S. Title 32, Chapter 13, 15, 17, 18, or 25; and
  - 4. ~~Complies fully with the Requires passing an examination and evaluation requirements specified in R4-33-702(H) regarding assisted living facility caregiver medication management, using the standard specified in R4-33-702(A)(2)(b), that is approved by the Board and given by a Board-approved provider. An individual under subsection (B) shall pass the required examination in no more than three attempts. After failing three times, the individual may take the assisted living facility caregiver medication management program again.~~
- D. In addition to complying with subsection (C), a person under subsection (A) shall ensure each individual under subsection (B) who participates in an assisted living facility caregiver medication management training program:
  - 1. Receives notice, before participating in the training program, of:
    - a. The fingerprint clearance card requirement, and
    - b. The need to obtain a food-handler's card from the county in which the individual lives.
  - 2. Provides written documentation, which is dated and signed, indicating the person under subsection (A) complied with subsection (D)(1). The person under subsection (A) shall maintain the written documentation under R4-33-702(G)(2).
- ~~D-E.~~ In addition to complying with subsection (C), a person under subsection (A) that offers an assisted living facility caregiver medication management training program to individuals specified under subsection (B) shall comply with the following subsections of R4-33-702:
  - 1. (A)(4)(a), (b), and (d) through (f);
  - 2. (A)(5)(a) through (d), (g), and (h);
  - 3. (A)(6)(b) and (c);



4. (G)(1)(b) through (d);
5. (G)(2)(a), ~~(c), through~~ (d), and (f);
6. (I) and
7. (J).





**11. A summary of the comments made regarding the rule and the agency response to them:**

The Board's Certification Advisory Committee recommended the Board open rulemaking on the rule. At the December 13, 2019 Board Meeting, the Board opened rulemaking on R7-2-615.01. A public hearing was held on January 7, 2020. The Board received an update at the January 27, 2020 meeting and closed rulemaking at the February 24, 2020 meeting. No public comments were received.

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

Not applicable

**13. Incorporations by reference and their location in the rules:**

Not applicable

**14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:**

Not applicable

**15. The full text of the rule follows:**

**TITLE 7. EDUCATION  
CHAPTER 2. STATE BOARD OF EDUCATION**

**ARTICLE 6. CERTIFICATION**

Section

R7-2-615.01. Special Education Endorsements

**ARTICLE 6. CERTIFICATION**

**R7-2-615.01 Special Education Endorsements**

**A.** Except as noted, special education endorsements are subject to the general certification provisions in R7-2-607.

**B.** Mild/Moderate Disabilities Endorsement:

1. The endorsement authorizes the holder to teach students with mild/moderate disabilities in preschool through grade twelve.
2. A provisional mild/moderate disabilities endorsement is valid for three years and is not renewable. The requirements are:
  - a. A valid Arizona Standard Professional Early Childhood, Elementary, Middle Grades, Secondary, Visually Impaired, Hearing Impaired, Early Childhood Special Education, or Moderate/Severe Disabilities certificate;
  - b. Three years of full-time teaching experience in preschool through grade twelve;
  - c. Six semester hours of special education courses to include both of the following:
    - i. Behavior management for students with disabilities; and
    - ii. Special education assessment and individualized education program planning.
  - d. Completion of 15 clock hours of practicum in mild/moderate disabilities special education that may be included in the courses listed in (B)(2)(c).
3. The requirements for the mild/moderate disabilities endorsement are:
  - a. A valid Arizona Standard Professional Early Childhood, Elementary, Middle Grades, Secondary, Visually Impaired, Hearing Impaired, Early Childhood Special Education, or Moderate/Severe Disabilities certificate;
  - b. Three years of full-time teaching experience in preschool through grade twelve;
  - c. Fifteen semester hours of special education courses to include all of the following:
    - i. Methods for teaching students with disabilities;
    - ii. Behavior management for students with disabilities;
    - iii. Special education law;
    - iv. Special education assessment and individualized education program planning;
    - v. Language development and disorders.
  - d. Completion of 45 clock hours of practicum in mild/moderate disabilities special education that may be included in the courses listed in (B)(3)(c).

**C.** Moderate/Severe Disabilities Endorsement

1. The endorsement authorizes the holder to teach students with moderate/severe disabilities in preschool through grades twelve.
2. A provisional moderate/severe disabilities endorsement is valid for three years and is not renewable. The requirements are:
  - a. A valid Arizona Standard Professional Early Childhood, Elementary, Middle Grades, Secondary, Visually Impaired, Hearing Impaired, Early Childhood Special Education, or Mild/Moderate Disabilities certificate;
  - b. Three years of full-time teaching experience in preschool through grade twelve; and
  - c. Six semester hours of special education courses to include both of the following:
    - i. Behavior management for students with disabilities; and
    - ii. Special education assessment and individualized education program planning.
  - d. Completion of 15 clock hours of practicum in moderate/severe disabilities special education that may be included in the courses listed in (C)(2)(c).
3. The requirements are for the moderate/severe disabilities endorsement are:
  - a. A valid Arizona Standard Professional Early Childhood, Elementary, Middle Grades, Secondary, Visually Impaired, Hearing Impaired, Early Childhood Special Education, or Mild/Moderate Disabilities certificate;
  - b. Three years of full-time teaching experience in preschool through grade twelve;
  - c. Fifteen semester hours of special education courses to include all of the following:



- i. Behavior management for students with disabilities;
- ii. Special education law;
- iii. Special education assessment and individualized education program planning;
- iv. Methods for teaching students with severe disabilities;
- v. Adaptive communication, including language development and disorders.
- d. Completion of 45 clock hours of practicum in moderate/severe disabilities special education that may be included in the courses listed in (C)(3)(c).

**NOTICE OF FINAL EXEMPT RULEMAKING  
TITLE 7. EDUCATION  
CHAPTER 2. STATE BOARD OF EDUCATION**

[R20-44]

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R7-2-1001	Amend
R7-2-1002	Amend
R7-2-1003	Amend
R7-2-1008	Amend
R7-2-1018	Amend
R7-2-1022	Amend
R7-2-1024	Amend
R7-2-1028	Amend
R7-2-1031	Amend
R7-2-1042	Amend
R7-2-1044	Amend
R7-2-1050	Amend
R7-2-1058	Amend
R7-2-1068	Amend
R7-2-1069	Amend
R7-2-1087	Amend
R7-2-1101	Amend
R7-2-1102	Amend
R7-2-1105	Amend
R7-2-1108	Amend
R7-2-1117	Amend
R7-2-1122	Amend
R7-2-1131	Amend
R7-2-1133	Amend
R7-2-1142	Amend
R7-2-1144	Amend
R7-2-1145	Amend
R7-2-1147	Amend
R7-2-1149	Amend
R7-2-1150	Amend
R7-2-1155	Amend
R7-2-1156	Amend
R7-2-1157	Amend
R7-2-1158	Amend
R7-2-1181	Amend
<b><u>2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:</u></b>	
Authorizing statute: A.R.S. § 15-213	
Implementing statute: A.R.S. § 15-213	
Exemption statute: A.R.S. § 41-1005(F)	
<b><u>3. The effective date of the rules and the agency’s reason it selected the effective date:</u></b>	
July 1, 2020	
<b><u>4. A list of all notices published in the Register as specified in R1-1-409(A) that pertains to the record of the exempt rulemaking:</u></b>	
Not applicable	



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

Name: Alicia Williams, Executive Director  
Address: State Board of Education  
1700 W. Washington, Suite 300  
Phoenix, AZ 85007  
Telephone: (602) 542-5057  
Fax: (602) 542-3046  
E-mail: inbox@azsbe.az.gov

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

A.R.S. § 15-213 requires the Board to adopt rules prescribing procurement practices, consistent with those prescribed for state government, for all school districts in the state.

Representatives from school districts, the Attorney General's Office and the Auditor General's Office began developing updates to the Board's procurement rules in 2017 to ensure the rules are consistent with state procurement practices with allowable modifications. The updates to the rules are necessary to remain in compliance with statute.

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

Not applicable

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business and consumer impact, if applicable:**

The rules are not expected to have significant, if any, economic impact on small businesses.

**10. A description of the changes between the proposed rules, including supplemental notices and final rules (if applicable):**

Not applicable

**11. A summary of the comments made regarding the rule and the agency response to them:**

The Board opened rulemaking procedures at the June 24, 2019 Meeting and held several stakeholder meetings with district representatives, the Auditor General's Office and the Attorney General's Office. A public hearing was held on July 25, 2019. The Board received updates on the rules at the August 26, 2019, September 23, 2019 and January 27, 2020 Board Meetings. Updates to the rules were made at the recommendation of the Auditor General to conform to statutory requirements.

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

Not applicable

**13. Incorporations by reference and their location in the rules:**

Not applicable

**14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:**

Not applicable

**15. The full text of the rule follows:**

**TITLE 7. EDUCATION  
CHAPTER 2. STATE BOARD OF EDUCATION  
ARTICLE 10. SCHOOL DISTRICT PROCUREMENT**

Section	
R7-2-1001.	Definitions
R7-2-1002.	Applicability
R7-2-1003.	General Provisions
R7-2-1008.	Procurement Consultants and Procurement Advisory Groups
R7-2-1018.	Reverse Auctions
R7-2-1022.	Notice of Competitive Sealed Bidding
R7-2-1024.	Invitation for Bids
R7-2-1028.	Late Bids, Late Withdrawals and Late Modifications
R7-2-1031.	Bid Evaluation and Award
R7-2-1042.	Request for Proposals
R7-2-1044.	Late Proposals, Modifications or Withdrawals
R7-2-1050.	Contract Award
R7-2-1058.	Request for Information
R7-2-1068.	Contract Award



R7-2-1069. Guaranteed Energy Cost Savings Contracts  
 R7-2-1087. Contract Clauses

### ARTICLE 11. SCHOOL DISTRICT PROCUREMENT (CONTINUED)

#### Section

R7-2-1101. Qualified Select Bidders List  
 R7-2-1102. Bid Security  
 R7-2-1105. Progress Payments  
 R7-2-1108. Request for Qualifications  
 R7-2-1117. Procurement of Specified Professional Services  
 R7-2-1122. Specified Professional Services Contracts Not Exceeding Certain Amounts  
 R7-2-1131. Material Management and Disposition  
 R7-2-1133. Authority for Transfer of Material  
 R7-2-1142. Filing of a Protest  
 R7-2-1144. Stay of Procurements During the Protest  
 R7-2-1145. Decision by the District Representative  
 R7-2-1147. Appeals to a Hearing Officer  
 R7-2-1149. Stay of Procurement During Appeal  
 R7-2-1150. District Representative's Response  
 R7-2-1155. Resolution of Contract Claims and Controversies  
 R7-2-1156. District Representative's Decision  
 R7-2-1157. Issuance of a Timely Decision  
 R7-2-1158. Appeals to a Hearing Officer  
 R7-2-1181. Hearing Procedures

### ARTICLE 10. SCHOOL DISTRICT PROCUREMENT

#### R7-2-1001. Definitions

In Articles 10 and 11, unless the context otherwise requires:

1. "Acceptance period" means the period of time specified in the solicitation that a bid or proposal is irrevocable, except as specified in R7-2-1030.
2. "Actual energy production" means the actual amount of energy that flows from the energy production measure on an annual basis as measured by a meter in kilowatt hours alternating current.
3. "Advantageous to the school district" means in the best interest of the school district, but does not necessarily mean lowest bid/cost.
4. "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. It also may include persons doing business under a variety of names, or where there is a parent-subsidary relationship between persons.
5. "Alternative project delivery methods for construction" means construction-manager-at-risk, design-build, and job-order-contracting construction services.
6. "Architect services," "engineer services," "land surveying services," "assayer services," "geologist services" and "landscape architect services" means mean those professional services within the scope of the practice of those services as provided in A.R.S. Title 32, Chapter 1, Article 1.
7. "Award" means a determination by the school district that it is entering into a contract with one or more bidders or offerors.
8. "Bid" means a response to an invitation for bids and includes an offer to contract with the school district.
9. "Bidder" means a person submitting a bid in response to an invitation for bids.
10. "Brand name or equal specification" means a written description that uses one or more manufacturers' names or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet the school district's requirements, and that provides for the submission of equivalent products.
11. "Brand name specification" means a written description limited to one or more items by manufacturers' names or catalog numbers.
12. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
13. "Change order" means a written order that is approved by the governing board and that directs the contractor to make changes that the changes clause of the contract authorizes the governing board to order.
14. "Clergy" means a minister of a religion.
15. "Coefficient" means the contractor's price adjustment to the unit price in a job order contract. Several coefficients may apply to the unit price book.
16. Construction:
  - a. Means the process of building, altering, repairing, improving or demolishing any school district structure or building, or other public improvements of any kind to any public real property.
  - b. Construction does not include:
    - i. The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
    - ii. The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.



- 17. "Construction-manager-at-risk" means a project delivery method in which:
  - a. There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the school district may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
  - b. The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
  - c. Design and construction of the project may be either:
    - i. Sequential with the entire design complete before construction commences.
    - ii. Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
  - d. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
- 18. "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:
  - a. Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
  - b. A combination of construction and, as elected by the school district, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this Section.
- 19. "Contract" means all types of agreements, including purchase orders, regardless of what they may be called, for the procurement of materials, services, construction or construction services, or the disposal of materials.
- 20. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
- 21. "Contractor" means any person who has a contract with a school district.
- 22. "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.
- 23. "Cost" means the aggregate cost of all materials and services, including labor performed by school district employees.
- 24. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead and other cost elements that have been actually incurred or that are expected to be incurred by the offeror or contractor in performing the contract.
- 25. "Cost-plus-a-percentage-of-cost contract" means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the cost of the work.
- 26. "Data" means documented information, regardless of form or characteristic.
- 27. "Days" means calendar days and shall be computed pursuant to A.R.S. § 1-243.
- 28. "Defective data" means data that is inaccurate, incomplete or outdated.
- 29. "Dentist" means a person licensed pursuant to A.R.S. Title 32, Chapter 11.
- 30. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction or operation of an item offered in a bid or proposal.
- 31. "Design-bid-build" means a project delivery method in which:
  - a. There is a sequential award of two separate contracts.
  - b. The first contract is for design services.
  - c. The second contract is for construction.
  - d. Design and construction of the project are in sequential phases.
  - e. Finance services, maintenance services and operations services are not included.
- 32. "Design-build" means a project delivery method in which:
  - a. There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the school district may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.
  - b. Design and construction of the project may be either:
    - i. Sequential with the entire design complete before construction commences.
    - ii. Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
  - c. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
- 33. "Design professional" means an individual or firm that is registered by the state board of technical registration pursuant to A.R.S. Title 32, Chapter 1 to practice architecture, engineering, geology, landscape architecture or land surveying or any combination of those professions and any person employed by the registered individual or firm.
- 34. "Design professional service contract" means a written agreement relating to the planning, design, construction administration, study, evaluation, consulting, inspection, surveying, mapping, material sampling, testing or other professional, scientific or technical services furnished in connection with any actual or proposed study, planning, survey, environmental remediation, construction, improvement, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility or development or other improvement to land.
- 35. "Design professional services" means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination of those services performed by or under the supervision of a design professional or an employee or subconsultant of the design professional.
- ~~34-36.~~ "Design requirements" means at a minimum:
  - a. The school district's written description of the project or service to be procured, including:



- i. The required features, functions, characteristics, qualities and properties.
    - ii. The anticipated schedule, including start, duration and completion.
    - iii. The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.
  - b. May include:
    - i. Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by a design professional who is registered pursuant to A.R.S. § 32-121.
    - ii. Additional design information or documents that the school district elects to include.
- ~~35-37.~~ “Design services” means architect services, engineer services or landscape architect services.
- ~~36-38.~~ “Designee” means the governing board member or school district employee who has been delegated procurement authority by the governing board as specified by board action.
- ~~37-39.~~ “Detailed record” means minutes, that shall include the date, time, place, persons in attendance and a summary of what was said by whom and the decisions made. The minutes may be made either in writing or by a recording.
- ~~38-40.~~ “Discussions” means an exchange or series of exchanges between the school district and a person who has submitted an unpriced technical offer or a proposal, resulting in an opportunity for the person to revise the unpriced technical offer or proposal prior to final evaluation by the school district.
- ~~39-41.~~ “District representative” means a district employee or the governing board acting within the limits of the district representative’s authority. There may be more than one appointed for different purposes and different procurements.
- ~~40-42.~~ “Earth-moving, material-handling, road maintenance and construction equipment” means a track-type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel loader or track loader, having a published manufacturer’s minimum unit list price of \$50,000 or more and a minimum expected life cycle of three years.
- ~~41-43.~~ “Effective utility rate” means the average price per kilowatt hour that a school district paid to its utility provider for electricity service to the facility that is the subject of the guaranteed energy production contract over the previous twelve months.
- ~~42-44.~~ “Eligible procurement unit” means a public procurement unit, a nonprofit corporation, or an external procurement activity.
- ~~43-45.~~ “Employee” means an individual drawing a salary from a school district and any noncompensated individual performing personal services for any school district.
- ~~44-46.~~ “Energy baseline” means a calculation of the amount of energy used in an existing facility before the installation or implementation of the energy cost savings measures.
- ~~45-47.~~ “Energy cost savings measure” means a training program or facility alteration designed to reduce energy consumption, which may include one or more of the measures authorized in A.R.S. § ~~15-213.01(P)(3)~~ 15-213.01, and any related meters or other measuring devices.
- ~~46-48.~~ “Energy production measure” means renewable and alternative energy projects or renewable energy power service agreements.
- ~~47-49.~~ “Established catalog price” means the price included in a catalog, price list, schedule or other form that:
  - a. Is regularly maintained by a manufacturer, distributor or contractor.
  - b. Is either published or otherwise available for inspection by customers.
  - c. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.
- ~~48-50.~~ “Excess materials” means any materials which have a remaining useful life but which are no longer required by the using school district in possession of the materials.
- ~~49-51.~~ “External procurement activity” means any buying organization not located in this state that would qualify as a public procurement unit.
- ~~50-52.~~ “Fair market value” means the price at which sales have been consummated for materials of like type, quality, and quantity in a particular market at the time of acquisition.
- ~~51-53.~~ “Filed” means delivery to the district representative, school district or its hearing officer, whichever is applicable. A time/date stamp affixed to a document by the school district shall be determinative of the time or delivery for purposes of filing.
- ~~52-54.~~ “Finance services” means financing for a construction services project.
- ~~53-55.~~ “General Services Administration contract” means contracts awarded by the United States government General Services Administration.
- ~~56.~~ “Gift or benefit” means a payment, distribution, expenditure, advance, deposit or donation of monies, any intangible personal property or any kind of tangible personal or real property that is not of nominal value such as a greeting card, t-shirt, mug or pen. Gift or benefit does not include either:
  - a. Food or beverage.
  - b. Expenses or sponsorships relating to a special event or function to which individuals involved in procurement and purchasing are invited.
- ~~54-57.~~ “Governing board” has the meaning defined in A.R.S. § 15-101(~~13~~).
- ~~55-58.~~ “Governing instruments” means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
- ~~56-59.~~ “Guaranteed energy cost savings contract” means a contract for implementing one or more energy cost savings measures.
- ~~57-60.~~ “Guaranteed energy price” means the agreed on price to be charged to the school district for each kilowatt hour alternating current of actual energy production as such may change on an annual basis as set forth in the guaranteed energy production contract.
- ~~58-61.~~ “Guaranteed energy production” means the amount of energy, measured in kilowatt hours alternating current, that the qualified provider guarantees for each year of the guaranteed energy production contract.
- ~~59-62.~~ “Guaranteed energy production contract” means a contract for implementing one or more energy production measures between one or more qualified providers and a school district.
- ~~60-63.~~ “Guaranteed energy production shortfall” means the amount, if any, that the actual energy production is less than the guaranteed energy production in any given year.



- 61-64. "Incremental award" means an award of portions of a definite quantity requirement to more than 1 contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
- 62-65. "Interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.
- 63-66. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.
- 64-67. "Invitation for bids" means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in R7-2-1024.
- 65-68. "In writing" has the same meaning as "written" or "writing" in A.R.S. § 47-1201(43), which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
- 66-69. "Job-order-contracting" means a project delivery method in which:
  - a. The contract is a requirements contract for indefinite quantities of construction.
  - b. The construction to be performed is specified in job orders issued during the contract.
  - c. Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.
- 67-70. "Legal counsel" means a person licensed as an attorney by the Arizona Supreme Court.
- 68-71. "Life cycle" means the useful life of the earth-moving, material-handling, road maintenance and construction equipment to the original using school district.
- 69-72. "Local public procurement unit" means any political subdivision, any agency, board, department or other instrumentality of such political subdivision, and any nonprofit corporation created solely for the purpose of administering a cooperative purchase under Articles 10 and 11.
- 70-73. "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.
- 71-74. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property, but does not include land, a permanent interest in land or real property or leasing space.
- 72-75. "May" denotes the permissive.
- 73-76. "Minor" means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery or other contractual terms and the waiver or correction of such mistake does not prejudice other bidders or offerors.
- 74-77. "Multiple award" means award of multiple contracts for identical or similar materials or services to more than one bidder or offeror.
- 75-78. "Multistep sealed bidding" means a 2-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the school district and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
- 76-79. "Negotiation" means an exchange or series of exchanges between the school district and a person with a goal of establishing the terms, conditions and prices in a contract between the school district and the person, where such negotiation is authorized in Articles 10 and 11.
- 77-80. "Nonexpendable materials" means all tangible materials which have an original acquisition cost over an amount set by regulation and a probable useful life of more than one year.
- 78-81. "Nonprofit corporation" means any nonprofit corporation as designated by the Internal Revenue Service under section 501(c)(3) through 501(c)(6) or under section 115, if created by two or more local public procurement units, and includes certified nonprofit agencies that serve individuals with disabilities as defined in A.R.S. § 41-2636.
- 79-82. "Offeror" means a person submitting a proposal in response to a request for proposals.
- 80-83. "Operations services" means routine operation of existing facilities, structures, buildings or real property.
- 81-84. "Outright purchase" means the initial cost to the school district for the earth-moving, material-handling, road maintenance and construction equipment, including all vendor charges and financing costs.
- 82-85. "Owner" means the school district.
- 83-86. "Paper" means newspaper, high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than ten percent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.
- 84-87. "Paper product" means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten percent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturates.
- 85-88. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.
- 86-89. "Physician" means a person licensed pursuant to A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
- 87-90. "Post-consumer material" means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer material does not include discards from industrial or manufacturing processes.
- 88-91. "Posted prices" means the sale price determined by the school district to be fair market value.
- 89-92. "Preconstruction services" means services and other activities during the design phase.
- 90-93. "Pricing data" means information concerning prices, including profit, for materials, services or construction substantially similar to those being 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 being purchased.
- 91-94. "Prime contractor" means a general contractor, who contracts with a property owner and, in turn, employs a subcontractor, or subcontractors, to perform some or all of the work.
- 92-95. "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services. Procurement also includes all functions that pertain to the obtaining of any material, service, construction, or



construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

~~93-96.~~ “Procurement file” means the official procurement records of the school district containing the following:

- a. List of notified vendors.
- b. Procurement disclosure statements.
- c. Final solicitation.
- d. Solicitation amendments.
- e. Bids and offers.
- f. Offer revisions and best and final offers.
- g. Discussions.
- h. Clarifications.
- i. Final evaluation reports.
- j. Additional information, as necessary.

~~94-97.~~ “Proposal” means a response to a request for proposals and includes an offer to contract with the school district.

~~95-98.~~ “Proprietary specification” means a specification that describes a material made and marketed by a person having the exclusive right to manufacture and sell such material and excludes other material with similar quality, performance or functional characteristics from being responsive to the solicitation.

~~96-99.~~ “Public procurement unit” means either a local public procurement unit, the Arizona Department of Administration, any other state or an agency of the United States.

~~97-100.~~ “Public service corporation” means all corporations other than municipal engaged in furnishing gas, electricity, or water and subject to regulation as a utility by the Arizona Corporation Commission.

~~98-101.~~ “Purchase description” means the words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to, or made a part of, the solicitation.

~~99-102.~~ “Purchase requisition” means that document, or electronic transmission, whereby a school district requests that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested source of supply and information supplied for the making of any written determination required by Articles 10 and 11.

~~100-103.~~ “Qualified products list” means an approved list of materials or construction items described by model or catalog numbers that, prior to competitive solicitation, the governing board has determined will meet the applicable specification requirement.

~~101-104.~~ “Qualified select bidders list” means a selection process for establishing a list of best-qualified prime contractors or construction material suppliers for a specific, single project. The selection process is based upon listed evaluation criteria and conducted through a request for qualifications. Once the selection process is complete, the qualified bidders are invited to submit a sealed competitive bid based upon architectural/engineering plans and specifications or material specifications.

~~102-105.~~ “Reasonably susceptible of being awarded a contract” means those proposals that the school district determines are subject to award after the initial review of all original proposals.

~~103-106.~~ “Recycled paper” means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least forty percent recovered wastepaper with ten percent of that being post-consumer material.

~~104-107.~~ “Regional award” means an award of portions of the total requirement by geographic region.

~~105-108.~~ “Request for information” means all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.

~~106-109.~~ “Request for proposals” means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in R7-2-1042.

~~107-110.~~ “Request for qualifications” means all documents, whether attached or incorporated by reference, which are used for soliciting statements of qualifications in accordance with procedures prescribed in R7-2-1101, R7-2-1106, R7-2-1108 or R7-2-1117.

~~108-111.~~ “Residual value” means the guaranteed minimum market value of the earth-moving, material-handling, road maintenance and construction equipment at the end of the life cycle of the equipment being procured, as determined by a guaranteed minimum value offered by the vendor or other parties in its bid.

~~109-112.~~ “Responsible bidder or offeror” means a person who at the time of contract award has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

~~110-113.~~ “Responsive bidder or offeror” means a person who submits a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.

~~111-114.~~ “Reverse auction” means a procurement method in which bidders are invited to bid on supplying specified materials over the Internet in a real-time competitive bidding event.

~~112-115.~~ “School district” has the meaning defined in A.R.S. § 15-101(~~2~~), whose authority is exercised by the governing board or its designee.

~~113-116.~~ “Services” means the furnishing of labor, time or effort by a contractor or subcontractor that does not involve the delivery of a specific end product other than required reports and performance. Services does not include employment agreements or collective bargaining agreements.

~~114-117.~~ “Shall” denotes the imperative.

~~115-118.~~ “Solicitation” means an invitation for bids, an invitation to submit technical offers, a request for proposals, a request for qualification, or any other invitation or request by which the school district invites a person to participate in a procurement.

~~116-119.~~ “Specification” means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery.

~~117-120.~~ “Specified professional services” means services of an architect, engineer, land surveyor, assayer, geologist and landscape architect and any combination of those services.



- ~~118-121.~~ “Standard commercial material” means material that, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.
- ~~119-122.~~ “Statement of qualifications” means a response to a request for qualifications issued pursuant to R7-2-1101, R7-2-1106, R7-2-1108 or R7-2-1117, or unsolicited qualifications submitted pursuant to R7-2-1062 or R7-2-1122, and does not include an offer to contract with the school district.
- ~~120-123.~~ “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 a school district.
- 124. “Subconsultant” means any person, firm, partnership, corporation, association or other organization or a combination of any of them, that has a direct contract with a design professional or another subconsultant to perform a portion of the work under a design professional service contract.
- ~~121-125.~~ “Surplus materials” means any materials that no longer have any use to the school district or materials acquired from the United States government. This includes obsolete materials, scrap materials and nonexpendable materials that have completed their useful life.
- ~~122-126.~~ “Suspension” means an action taken by the governing board under R7-2-1168 temporarily disqualifying a person from participating in school district procurements.
- ~~123-127.~~ “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.
- ~~124-128.~~ “Total life cycle cost” means total school district costs and financing costs throughout the life cycle of the earth-moving, material-handling, road maintenance and construction equipment being purchased less residual value.
- ~~125-129.~~ “Total school district costs” means costs to the school district for the earth-moving, material-handling, road maintenance and construction equipment, including repair costs, present value of monies, vendor charges, and all other identifiable school district costs that may be incurred.
- ~~126-130.~~ “Unit price” means the price published in the unit price book for a specific construction or construction related task. Each unit price is comprised of labor, equipment, or material costs to accomplish a specific task, and shall be defined in the contract.
- ~~127-131.~~ “Unit price book” means a comprehensive listing of specific construction related tasks together with a specific unit of measurement and a unit price.
- ~~128-132.~~ “Vendor charges” means the costs of all vendor support, materials, transportation, and all other identifiable costs associated with the vendor’s proposal or bid.
- ~~129-133.~~ “Vendor support” means services provided by the vendor for items such as consulting, education and training.
- ~~130-134.~~ “Wastepaper” means recyclable paper and paperboard, including high-grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

**R7-2-1002. Applicability**

- A. Articles 10 and 11 apply to every expenditure of public monies, including federal assistance monies and grants, by a school district as specified in A.R.S. § 15-213(A) for the procurement of all construction, materials and services when the total procurement cost exceeds the aggregate dollar amount specified in A.R.S. § 41-2535(A). If procurement involves the expenditure of federal assistance or contract monies, the school district shall comply with federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in Articles 10 and 11.
- B. Articles 10 and 11 apply to the disposal of school district materials regardless of value.
- ~~C. Nothing in Articles 10 and 11 shall prevent any governing board from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.~~
- ~~D-C.~~ Articles 10 and 11 do not apply to:
  1. Agreements for providing career and technological education and vocational education pursuant to A.R.S. § 15-789;
  2. Contracts between a school district and other governments, including intergovernmental agreements and contracts pursuant to A.R.S. § 11-952, except as provided by R7-2-1191 through R7-2-1196. This exemption also includes the purchase of a fee or license from a local, state or federal public entity required by law to collect said fees;
  3. Purchases for amounts not exceeding the aggregate dollar amount specified in A.R.S. § 41-2535(A). Such procurements shall comply with the guidelines prescribed by the Auditor General in the Uniform System of Financial Records pursuant to A.R.S. § 15-271~~(C)~~;
  4. Contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial or administrative proceeding in which the school district is or may become a party;
  5. Agreements negotiated by legal counsel representing the school district in settlement of litigation or threatened litigation;
  6. Expenditures from student activity monies as defined in A.R.S. § 15-1121, if no district funds are involved;
  7. Expenditures for ~~common school~~ governing board adopted textbooks as defined in A.R.S. § 15-721~~(G)~~ and A.R.S. § 15-722, if purchased from the publisher;
  8. The placement of a pupil in a private school that provides special education services if such placement is prescribed in the pupil’s individualized education program and the private school has been approved by the Department of Education Division of Special Education pursuant to A.R.S. § 15-765~~(D)~~;
  9. Purchases of any products, materials and services directly from ~~Arizona Industries for the Blind~~, certified nonprofit agencies that serve individuals with disabilities as defined in A.R.S. § 41-2636~~(G)~~, and Arizona Correctional Industries if the delivery and quality of the products, materials or services meet the school district’s reasonable requirements;
  10. The decision to participate in programs pursuant to A.R.S. § 15-382. A program authorized by A.R.S. § 15-382 is not required to engage in competitive bidding for the services necessary to administer the program or for the purchase of insurance or reinsurance;
  11. The purchase of water, gas or electric utilities from a public service corporation. This exemption expressly does not apply to guaranteed energy cost savings contracts and guaranteed energy production contracts subject to A.R.S. § 15-213.01 and A.R.S. § 15-213.03; ~~and~~



12. Purchases of professional certifications, professional memberships ~~and~~, conference registrations, conference hotels and airfare that meets Arizona Department of Administration General Travel Principles and Policies;
13. Purchases, sales or leases of real estate. This exemption expressly does not apply to the services of a real estate broker as defined in A.R.S. § 32-2101;
14. Purchases of surplus property from the state or United States Federal Government in accordance with R7-2-1132;
15. Purchases in compliance with the terms and conditions of any grant, gift, bequest or cooperative agreement; and
16. The cost of special elections, including the preparation of ballots in accordance with A.R.S. § 15-406.

~~E-D.~~ Unless displaced by the particular provisions of Articles 10 and 11, the principles of law and equity, including the Uniform Commercial Code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion, and mistake supplement the provisions of Articles 10 and 11.

#### **R7-2-1003. General Provisions**

- A. The school district shall not award a contract or incur an obligation on behalf of the school district unless it is reasonable to believe sufficient funds will be available for the procurement. If sufficient funds are not available when a solicitation is issued, the solicitation shall include a statement that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.
- ~~B.~~ Projects and purchases shall not be divided or sequenced into separate projects or purchases in order to avoid the limits prescribed in Articles 10 and 11.
- ~~B-C.~~ Any bid or proposal that is conditioned upon award to the bidder or offeror of both the particular contract being solicited and another school district contract shall be deemed nonresponsive or unacceptable.
- ~~C-D.~~ Except by mutual consent of the parties to the contract, rules in Articles 10 and 11 shall not change any commitment, right or obligation of a school district or of a contractor under a contract in existence on the effective date of the rule.
- ~~E.~~ If a contractor requests to change the name in which it holds a school district contract, the school district may, upon receipt of a document indicating the name change, enter into a contract modification with the contractor to effect the name change. The contract modification shall provide that no other terms and conditions of the contract are changed.
- ~~F.~~ The school district may allow electronic media transactions, including an electronic record or electronic signature, if consistent with state law and advantageous to the school district.
- ~~D-G.~~ Rights and duties arising from a school district contract may only be transferred, waived or assigned upon the express written consent of both parties.
- ~~E-H.~~ School district employees and public officers shall not purchase construction, materials or services for their own personal or business use from contracts entered into by the school district.
- ~~I.~~ A person who supervises or participates in contracts, purchases, payments, claims or other financial transactions, or who supervises or participates in the planning, recommending, selecting or contracting for materials, services, goods, construction, or construction services of a school district or school purchasing cooperative is subject to the penalties prescribed in A.R.S. § 15-213(N) if the person solicits, accepts or agrees to accept any personal gift or benefit from a person or vendor that has secured or has taken steps to secure a contract, purchase, payment, claim or financial transaction with a school district or school purchasing cooperative.
- ~~J.~~ Any person or vendor that has secured or has taken steps to secure a contract, purchase, payment, claim or financial transaction with a school district or school purchasing cooperative that offers, confers or agrees to confer any personal gift or benefit on a person who supervises or participates in contracts, purchases, payments, claims or other financial transactions, or on a person who supervises or participates in planning, recommending, selecting or contracting for materials, services, goods, construction or construction services of a school district or school purchasing cooperative is subject to the penalties prescribed in A.R.S. § 15-213(O).
- ~~F.~~ If a contractor requests to change the name in which it holds a school district contract, the school district may, upon receipt of a document indicating the name change, enter into a contract modification with the contractor to effect the name change. The contract modification shall provide that no other terms and conditions of the contract are changed.
- ~~G.~~ The school district may allow electronic media transactions, including an electronic record or electronic signature, if consistent with state law and advantageous to the school district.
- ~~H-K.~~ A person who serves on an evaluation committee for a procurement is subject to A.R.S. § 41-2616(C).
- ~~I.~~ Projects and purchases shall not be divided or sequenced into separate projects or purchases in order to avoid the limits prescribed in Articles 10 and 11.
- ~~J-L.~~ A person who contracts for or purchases materials, services, goods, construction or construction services shall be subject to the penalties prescribed in A.R.S. § 15-213 and A.R.S. § 41-2616 for violations of and attempts to avoid Articles 10 and 11.
- ~~K-M.~~ Pursuant to A.R.S. § 15-213 and A.R.S. Title 41, Chapter 23, the Attorney General shall enforce the provisions of Articles 10 and 11 and may take action prescribed therein.

#### **R7-2-1008. Procurement Consultants and Procurement Advisory Groups**

- A. The school district may contract with a procurement consultant to assist in drafting specifications, in the development of solicitations, or in the management of the procurement process. A procurement consultant may provide guidance or advice to a procurement evaluation committee, but shall not serve as a voting member of such committee. For the purposes of this Section, a school district employee or a contracted business manager or purchasing director for the school district is not a procurement consultant.
- B. The school district may appoint procurement advisory groups or evaluation committees to assist with respect to specifications, solicitation evaluations or procurement in specific areas. Members of such procurement advisory groups or evaluation committees are not procurement consultants as set forth in this Section. Non-school district employees serving on such procurement advisory groups or evaluation committees are not eligible to receive compensation but are eligible for reimbursement of expenses consistent with the school district's travel policy adopted pursuant to A.R.S. § 15-342(5).
- C. A procurement consultant, a member of a procurement advisory group, or a member of an evaluation committee who participates in any aspect of a specific procurement shall be prohibited from receiving any benefit directly or indirectly from a contract for such procurement, and shall sign a procurement disclosure statement that the person has no interest in the procurement other than that of a dis-



closed remote interest, as defined in A.R.S. § 38-502, and will have no contact with any representative of a competing vendor related to the particular procurement except those contacts specifically authorized by these rules, and has not accepted any personal gift or benefit from a person or vendor that has secured or has taken steps to secure a contract, purchase, payment, claim or financial transaction with the school district or school purchasing cooperative. The procurement disclosure statements shall be retained in the procurement file.

- D. Specifications prepared by a procurement consultant or a procurement advisory group shall comply with R7-2-1010 through R7-2-1016.
- E. The school district shall not delegate to a procurement consultant, a procurement advisory group, or an evaluation committee the authority for the award or administration of any particular contract, or over any dispute, claim or litigation pertaining thereto, and a procurement consultant or a procurement advisory group shall not be authorized to obligate the school district in any manner.

**R7-2-1018. Reverse Auctions**

**A. Using reverse auctions**

- 1. If a governing board determines in writing that use of reverse auctions is more advantageous to the school district than other procurement methods prescribed by Articles 10 and 11, the school district may use reverse auctions for the purchase of materials.
- 2. The written determination shall include, but is not limited to the following information:
  - a. An estimate of the number of prospective bidders;
  - b. An explanation of how reverse auctions will foster competition;
  - c. An explanation of why reverse auctions is more advantageous to the school district than other prescribed procurement methods; and
  - d. The scope and estimated total dollar value of the proposed procurement.

**B. Reverse auction procedures**

- 1. The school district shall develop and implement procedures prior to conducting procurement via reverse auctions. The procedures shall include:
  - a. The method or methods to ensure the integrity and security of the reverse auctions;
  - b. The method or methods for registering bidders for reverse auctions;
  - c. The method or methods for notifying vendors of reverse auction opportunities;
  - d. The method or methods for receiving reverse auction bids; and
  - e. The school district official or officials authorized to conduct reverse auctions.
- 2. School districts may require bidders to register before the date and time for opening the reverse auction for submission of bids and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the invitation for bids.
- 3. Notice of a reverse auction shall be issued at least 14 days before the date and time for opening the reverse auction for submission of bids, unless a shorter time is determined necessary by the school district. If a shorter time is necessary, the school district shall document the specific reasons in the procurement file. The reverse auction notice shall include:
  - a. The school district's requirements for registering prior to the opening date and time, if any;
  - b. The designated site on the Internet for bidder registration and bid submission;
  - c. A link to the designated site on the Internet;
  - d. The scheduled date and time for opening the reverse auction for bid submission; and
  - e. The scheduled date and time for closing the reverse auction for bid submission.
- 4. The school district shall issue the notice of reverse auction as follows:
  - a. Mail or otherwise furnish the notice of reverse auctions to all prospective bidders registered with the school district for the specific material being solicited.
  - b. ~~In the event there are four or fewer prospective bidders on the bidders list, publish the notice in the official newspaper of the county as defined in A.R.S. § 11-255 within which the school district is located for two publications which are not less than six nor more than 10 days apart. The second publication shall not be less than two weeks before the date and time for closing the reverse auction for bid submission. The time of publication may be altered if determined necessary by the school district. The school district shall document the basis for the altered time of publication. Notice of reverse auction shall be given by the school district pursuant to R7-2-1022.~~
  - c. In addition to the notice provided in subsections (a) and (b), the school district may give such additional notice as the school district deems appropriate, including posting on a designated site on the Internet.
- 5. The school district shall prepare an invitation for bids that includes:
  - a. Notice that all information submitted by bidders will be made available for public inspection following the award of the contract, except for bid prices which will be made available to other bidders and the public when submitted by the bidder;
  - b. Information for submitting bids, including:
    - i. The date and time for opening the reverse auction for bid submission;
    - ii. The date and time for closing the reverse auction for bid submission;
    - iii. The provisions for extending the period for bid submission, if any;
    - iv. Instructions for submitting bids and other required information, including the designated site on the Internet for submitting bids;
    - v. Notice that bids shall be accepted electronically at the time and in the manner designated in the invitation for bids;
    - vi. Notice that bidders' prices shall be disclosed electronically to other bidders and the public on a real time basis;
    - vii. Notice that bidders may submit multiple prices and may reduce their bid prices until the reverse auction bidding is closed;
    - viii. Notice that the lowest price offered shall become the official bid price;
    - ix. Notice that the bidder is required to certify that submission of the bid did not involve collusion or other anticompetitive practices;



- x. Notice that the bidder is required to declare whether the bidder 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;
  - c. The purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements, as applicable. 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 needed to meet the school district's requirements and is not intended to limit or restrict competition. The invitation for bids shall state that products substantially equivalent to the brands designated qualify for consideration;
  - d. The factors to be used in bid evaluations, including criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Only objectively measurable evaluation criteria shall be included in the invitation for bids. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost and other identifiable costs. Evaluation factors need not be precise predictors, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the school district has available concerning future use.
  - e. The contract terms and conditions, including:
    - i. Warranty and bonding or other security requirements, as applicable;
    - ii. The length of the contract and whether the contract will include an option for extension; and
    - iii. Any other contract terms and conditions;
  - f. The name of the district representative or district representatives;
  - g. The manner by which the bidder is required to acknowledge amendments;
  - h. The minimum required information in the bid;
  - i. The specific requirements for designating trade secrets and other proprietary data as confidential;
  - j. Any specific responsibility criteria;
  - k. A statement specifying where documents incorporated by reference may be obtained;
  - l. A statement that the school district may cancel the solicitation or reject a bid in whole or in part if deemed advantageous to the school district;
  - m. The date, time and location of bid opening;
  - n. A description of all information that will be recorded and available for public inspection at bid opening; and
  - o. Procurement of earth-moving, material-handling, road maintenance and construction equipment shall include as price evaluation criteria the total life cycle cost including residual value of the earth-moving, material-handling, road maintenance and construction equipment and, to the extent practicable, outright purchase.
6. Amendments to invitations for bids shall be made in accordance with R7-2-1026.
- C.** The school district shall accept reverse auction bids as follows:
- 1. At the date and time for opening the reverse auction for bid submission, the school district shall begin accepting on-line bids and shall continue accepting bids until the reverse auction is officially closed.
  - 2. Bids shall be accepted electronically in the manner designated in the invitation for bids.
  - 3. All reverse auction on-line bids shall be posted electronically and updated on a real-time basis. Bidders' prices shall be disclosed to other bidders and the public.
  - 4. The identity of competing bidders shall not be disclosed until the reverse auction bidding is closed.
  - 5. Bidders shall have the opportunity to submit multiple prices and to reduce their bid prices.
  - 6. The lowest price offered shall become the official bid price.
- D.** Bids made through a reverse auction are considered to be opened when a computer generated record of the information contained in all bids that were received by the designated site on the Internet not later than the scheduled or final closing date and time are reviewed publicly by the school district in the presence of one or more witnesses at the time and place designated in the invitation for bids. Bid opening shall not be later than 24 hours after the scheduled or final closing date and time.
- E.** The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and evaluation criteria set forth in the invitation for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the lowest bidder.
- F.** The school district shall not modify evaluation criteria after the closing date and time.
- G.** In the event that multiple bidders submit identical prices for the same materials, bids will be considered in the order received with the first being considered to be the lowest bid.
- H.** If only one bid is received in response to an invitation for bids, the school district shall proceed according to R7-2-1032.
- I.** The date and time for closing a reverse auction for bid submission may be fixed or remain open depending on the materials being bid.
- J.** After the reverse auction bidding has closed, a bidder may withdraw a bid or correct a mistake in accordance with R7-2-1030. Withdrawal of bids shall also be permitted as provided in R7-2-1028.
- K.** The school district shall notify all bidders of an award.
- L.** A copy of the invitation for bids shall be made available for public inspection at the school district office.
- M.** A record of the bid prices received and the name of each bidder shall be open to public inspection following bid opening.
- N.** A record of the reverse auction shall be maintained by the school district that will include all prices offered by all bidders. This record will become part of the procurement file.
- O.** Within 10 days after a contract is awarded, the school district shall make the procurement file, including all bids, available for public inspection.
- 1. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection.



- 2. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.

**R7-2-1022. Notice of Competitive Sealed Bidding**

- A. Adequate public notice of the invitation for bids shall be given as provided in ~~subsection (B) of this Section or in R7-2-1024(C)~~ R7-2-1024. ~~If notice is given pursuant to R7-2-1024(C),~~ Notice also may be given as provided in subsection (B). In the event there are four or fewer prospective bidders on the bidders list, then notice also shall be given as provided in subsection (B). If the invitation for bids is for the procurement of services other than those described in R7-2-1061 through R7-2-1068 and ~~R7-2-1117~~ R7-2-1100 through R7-2-1123, notice also shall be given as provided in subsection (B).
- B. ~~In the event there are four or fewer prospective bidders on the bidders list,~~ If required by subsection A, the notice shall include publication in the official newspaper of the county, within which the school district is located, as ~~defined~~ prescribed in A.R.S. § 11-255 ~~within which the school district is located for two publications which are not less than six nor more than ten days apart. The second publication, shall occur in a reasonable time before bid opening, which shall not be less than two weeks~~ 14 days before bid opening. The time of publication may be altered if deemed necessary pursuant to R7-2-1024(A).
- C. In addition to the notice provided in subsections (A) and (B), the school district may give such additional notice as the school district deems appropriate, including posting on a designated site on the Internet.

**R7-2-1024. Invitation for Bids**

- A. Invitation for bids shall be issued at least 14 days before the due date and time in the invitation for bids unless a shorter time is deemed necessary for a particular procurement as determined by the school district. If a shorter time is necessary, the school district shall document the specific reasons in the procurement file.

**B. Content.**

- 1. The invitation for bids shall include the following:
  - a. Notice that all information and bids submitted by bidders will be made available for public inspection following the award of the contract;
  - b. Instructions and information to bidders concerning bid submission requirements, including the means for bid submission such as, hand delivery, U.S. mail, electronic mail, facsimile, or other acceptable means, the bid due date and time, the address of the office at which bids or other documents are to be received, the bid acceptance period, and any other special information or requirements;
  - c. Whether the school district will consider partial bids for award of a contract;
  - d. Notification of whether the school district may award multiple contracts and the school district's basis for determining whether to award multiple contracts. If multiple contracts may be awarded, the invitation for bids shall include the criteria the school district will use for selecting vendors for each contract under the multiple award, including as applicable, whether contracts will be awarded by individual line items, ~~or~~ groups of line items, or categories, whether contracts will be awarded incrementally, ~~or~~ and whether contracts will be awarded by designated regions or locations;
  - e. The basis for determining the lowest bidder or bidders;
  - f. Procurement of earth-moving, material-handling, road maintenance and construction equipment shall include as price evaluation criteria the total life cycle cost including residual value of the earth-moving, material-handling, road maintenance and construction equipment and, to the extent practicable, the cost of outright purchase;
  - g. The purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements, as applicable. 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 other characteristics needed to meet the school district's requirements and is not intended to limit or restrict competition. The invitation for bids shall state that products substantially equivalent to the brands designated qualify for consideration;
  - h. The factors to be used in bid evaluations, including criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Only objectively measurable evaluation criteria shall be included in the invitation for bids. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost and other identifiable costs. Evaluation factors need not be precise predictors, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the school district has available concerning future use;
  - i. The contract terms and conditions, including:
    - i. Warranty and bonding or other security requirements, as applicable;-
    - ii. The length of the contract and whether the contract will include an option for extension; and
    - iii. Any other contract terms and conditions;
  - j. The name of the district representative or district representatives;
  - k. The manner by which the bidder is required to acknowledge amendments;
  - l. The minimum information required in the bid;
  - m. The specific requirements for designating trade secrets and other proprietary data as confidential;
  - n. Any specific responsibility criteria;
  - o. A statement specifying where documents incorporated by reference may be obtained;
  - p. A statement that the school district may cancel the solicitation or reject a bid in whole or in part if deemed advantageous to the school district;
  - q. Notice that the bidder is required to certify that submission of the bid did not involve collusion or other anticompetitive practices and that the bidder has taken steps and exercised due diligence to ensure that no violation of A.R.S. § 15-213(O) has occurred;



- r. Notice that the bidder is required to declare whether the bidder 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;
  - s. Any bid security required;
  - t. A description of all information that will be recorded and available for public inspection at bid opening; and
  - u. The date, time and location of any pre-bid conference.
2. When using electronic competitive sealed bidding, the invitation for bids shall specify whether electronic submission of bids is required or optional, the electronic submission requirements, and the electronic signature requirements.
- C. The school district shall mail or otherwise furnish invitation for bids or notices of the availability of invitation for bids to all prospective bidders registered with the school district for the specific material, service or construction being bid.
- D. A copy of the invitation for bids shall be made available for public inspection at the school district office.

**R7-2-1028. Late Bids, Late Withdrawals and Late Modifications**

- A. A bid, modification or withdrawal is late if it is received at the location designated in the invitation for bids for receipt of bids after the bid due date and time.
- B. A late bid, late modification, or late withdrawal shall be rejected, unless the late bid, late modification, or late withdrawal would have been timely received but for the action or inaction of school district personnel and is received before contract award.
- C. Upon receiving a late bid, late modification, or late withdrawal, the school district shall record the time and date of receipt and promptly send written notice of late receipt to the bidder. The school district may discard the document 30 days after the date on the notice unless the bidder requests and provides funding for the document to be returned.
- D. All documents concerning acceptance of a late bid, late modification, or late withdrawal shall be retained in the procurement file.

**R7-2-1031. Bid Evaluation and Award**

- A. As provided in subsection (C), the contract or contracts shall be awarded to the lowest responsible and responsive bidder or bidders whose bid or bids conform in all material respects to the requirements and evaluation criteria set forth in the invitation for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the lowest bidder.
- B. A product acceptability evaluation shall be conducted solely to determine whether a bidder's product is acceptable as set forth in the invitation for bids and not whether one bidder's product is superior to another bidder's product. Any bidder's offering that does not meet the acceptability requirements shall be rejected as nonresponsive.
- C. The school district shall award the contract to the single lowest responsible and responsive bidder for all materials or services, except that the school district may make a multiple award if the invitation for bids included notification that multiple contracts may be awarded, the school district's basis for determining whether to award multiple contracts, and the criteria for selecting vendors for the multiple contracts.
- D. Before making a multiple award, the school district shall determine in writing that a multiple award is necessary and is advantageous to the school district and shall establish procedures for the use of the multiple awarded contracts to ensure that purchases are made from the contracts determined by the school district to offer the lowest cost in satisfying the school district's requirements. A multiple award shall be limited to the least number of suppliers the school district determines in writing to be necessary to meet the school district's requirements, and may include the following types of awards:
- 1. Awards to the lowest responsible and responsive bidder for individual line items, ~~or~~ groups of line items, or categories.
  - 2. Awards to the lowest responsible and responsive bidders for similar or identical line items, ~~or~~ groups of line items, or categories only if the school district determines in writing that such awards are necessary to obtain the required quantity or delivery, and the awards are limited to the least number of bidders necessary to meet the school district's requirements.
  - 3. An incremental award only if the school district determines in writing that such an award is necessary to obtain the required quantity or delivery. The award shall be made to the lowest responsible and responsive bidder, then the next lowest responsible and responsive bidder or bidders until the total definite quantity required is awarded.
  - 4. A regional award to the lowest responsible and responsive bidder in designated regions or locations only if the school district determines in writing that such an award is necessary to obtain the required quantity or delivery over widely scattered locations or a particular requirement is of a local nature.
- E. The procurement file shall contain the basis on which the award or awards are made.
- F. The school district shall not modify evaluation criteria after the bid due date and time.
- G. A school district may appoint an evaluation committee to assist in the evaluation of bids. If bids are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the school district. The school district may:
- 1. Accept the findings of the evaluation committee;
  - 2. Request additional information from the evaluation committee; or
  - 3. Reject the findings of the evaluation committee, in which case the school district shall appoint a new evaluation committee to evaluate the existing bids or cancel the solicitation.
- H. The school district may contact a bidder to confirm the school district's understanding of the bid. Such contact shall be prior to award. The school district shall obtain written confirmation from the bidder and shall retain the confirmation in the procurement file.
- I. The contract or contracts shall be awarded during the bid acceptance period. If the bid acceptance period expires prior to award of the contract or contracts, the procurement shall be canceled, unless the bid acceptance period is extended in accordance with subsection (J).
- J. To extend the bid acceptance period, a school district shall notify all bidders in writing of an extension and request written concurrence from each bidder. To be eligible for a contract award, a bidder shall submit a written concurrence to the extension. The school district shall reject a bid as nonresponsive if written concurrence is not provided as requested.



- K. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids unless the bidder is also the lowest bidder as determined under subsection (A). This Section does not permit negotiations with any bidder, except as provided in subsection (L).
- L. If all bids for a construction project exceed available monies as certified by the school district, and the lowest responsive bid from a responsible bidder does not exceed such monies by more than five percent, the school district may in situations in which time or economic considerations preclude resolicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible and responsive bidder, to bring the bid within the amount of available monies.
- M. If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the invitation for bids, award shall be made by drawing lots in the presence of one or more witnesses.
- N. A record showing the basis for determining the successful bidder shall be retained in the procurement file.
- O. The school district shall notify all bidders of an award.
- P. After a contract is awarded, the school district shall return any bid security provided by unsuccessful bidders.
- Q. Upon execution of the contract, if performance and payment bonds were not required, or upon receipt of the specified bonds, if performance and payment bonds were required, the school district shall return any bid security provided by the successful bidder.
- R. Within 10 days after a contract is awarded, the school district shall make the procurement file, including all bids, available for public inspection.
  - 1. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection.
  - 2. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.

**R7-2-1042. Request for Proposals**

- A. Competitive sealed proposals shall be solicited through a request for proposals. A request for proposals shall include the following:
  - 1. Instructions to offerors, including:
    - a. Instructions and information to offerors concerning proposal submission requirements, including the means for proposal submission such as, hand delivery, U.S. mail, electronic mail, facsimile, or other acceptable means, the proposal due date and time, the address of the office at which proposals or other documents are to be received, the proposal acceptance period, and any other special information or requirements;
    - b. The manner by which the offeror is required to acknowledge amendments;
    - c. Notification of whether the school district may award multiple contracts and the school district's basis for determining whether to award multiple contracts. If multiple contracts may be awarded, the request for proposals shall include the criteria the school district will use for selecting vendors for each contract under the multiple award, including as applicable, whether contracts will be awarded by individual line items, ~~or~~ groups of line items, or categories, whether contracts will be awarded incrementally, ~~or and~~ whether contracts will be awarded by designated regions or locations;
    - d. The minimum information required in the proposal;
    - e. The specific requirements for designating trade secrets and other proprietary data as confidential;
    - f. Any specific responsibility criteria;
    - g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the proposal;
    - h. Evaluation factors and the relative importance of price and other evaluation factors. Specific numerical weighting is not required;
    - i. Procurement of earth-moving, material-handling, road maintenance and construction equipment shall include as evaluation factors the total life cycle cost including residual value of the earth-moving, material-handling, road maintenance and construction equipment and, to the extent practicable, the cost of outright purchase;
    - j. A statement specifying where documents incorporated by reference may be obtained;
    - k. A statement that the school district may cancel the solicitation or reject a proposal in whole or in part if deemed advantageous to the school district;
    - l. Notice that the offeror is required to certify that submission of the proposal did not involve collusion or other anticompetitive practices and that the offeror has taken steps and exercised due diligence to ensure that no violation of A.R.S. § 15-213(O) has occurred;
    - m. Notice 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. Any cost or pricing data required;
    - p. The type of contract to be used;
    - q. A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being awarded a contract;
    - r. The date, time and location of any pre-proposal conference;
    - s. The name of the district representative or district representatives;
    - t. A description of all information that will be recorded and available for public inspection at proposal opening;
    - u. Notice that all information and proposals submitted by offerors will be made available for public inspection following the award of the contract; and
    - v. Whether the school district will consider partial proposals for award of a contract.
  - 2. Specifications, including:
    - a. The purchase description, delivery or performance schedule, and inspection and acceptance requirements, as applicable;
    - 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 other characteristics needed to meet the school district's requirements 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. Contract terms and conditions, including:
    - a. Warranty and bonding or other security requirements, as applicable;
    - b. The length of the contract and whether the contract will include an option for extension; and
    - c. Any other contract terms and conditions.
  4. When using electronic competitive sealed proposals, the request for proposals shall specify whether electronic submission of proposals is required or optional, the electronic submission requirements, and the electronic signature requirements.
- B. A request for proposals shall be issued at least 14 days before the due date and time for receipt of proposals unless a shorter time is determined necessary by the school district. If a shorter time is necessary, the school district shall document the specific reasons in the procurement file.
- C. Notice of the request for proposals shall be given by the school district pursuant to R7-2-1022 and R7-2-1024(C).
- D. Before submission of initial proposals, amendments to requests for proposals shall be made in accordance with R7-2-1026. After submission of proposals, amendments may be made in accordance with R7-2-1036(D).
- E. A copy of the request for proposals shall be made available for public inspection at the school district office.

#### **R7-2-1044. Late Proposals, Modifications or Withdrawals**

- A. An offeror may modify or withdraw a proposal in writing at any time before proposal opening if the modification or withdrawal is received before the proposal due date and time at the location designated in the request for proposals for receipt of proposals.
- B. Withdrawal of a proposal after proposal opening is permissible only in accordance with R7-2-1049.
- C. A proposal received after the due date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R7-2-1028(B). A best and final offer received after the due date and time for receipt of best and final offers is late and shall not be considered except under the circumstances set forth in R7-2-1028(B).
- D. A modification of a proposal received after the due date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R7-2-1028(B).
- E. A modification of a proposal resulting from an amendment issued after the due date and time for receipt of proposals or a modification of a proposal resulting from discussions shall be considered if received by the due date and time set forth in the amendment or by the due date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered except under the circumstances set forth in R7-2-1028(B).
- F. Upon receiving a late proposal, late modification, or late withdrawal, the school district shall record the time and date of receipt and promptly send written notice of late receipt to the offeror. The school district may discard the document 30 days after the date on the notice unless the offeror requests and provides funding for the document to be returned.
- G. All documents concerning acceptance of a late proposal, late modification, or late withdrawal shall be retained in the procurement file.

#### **R7-2-1050. Contract Award**

- A. As provided in subsection (B), the school district shall award a contract or contracts to the responsible offeror or offerors whose proposal or proposals are determined in writing to be most advantageous to the school district based on the factors set forth in the request for proposals. No factors or criteria may be used in proposal evaluation that are not set forth in the request for proposals. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal.
- B. The school district shall award the contract to the offeror whose proposal is deemed most advantageous to the school district for all materials or services, except that the school district may make a multiple award if the request for proposals included notification that multiple contracts may be awarded, the school district's basis for determining whether to award multiple contracts, and the criteria for selecting vendors for the multiple contracts.
- C. Before making a multiple award, the school district shall determine in writing that a multiple award is necessary and is advantageous to the school district and shall establish procedures for the use of the multiple awarded contracts to ensure that purchases are made from the contracts determined by the school district to be most advantageous to the school district in satisfying the school district's requirements. A multiple award shall be limited to the least number of contracts the school district determines in writing to be necessary to meet the school district's requirements, and may include the following types of awards:
1. Awards to the offerors most advantageous to the school district for individual line items, ~~or~~ groups of line items, or categories.
  2. Awards to the offerors most advantageous to the school district for similar or identical line items, ~~or~~ groups of line items, or categories only if the school district determines in writing that such awards are necessary to obtain the required quantity or delivery, and the awards are limited to the least number of offerors necessary to meet the school district's requirements.
  3. An incremental award only if the school district determines in writing that such an award is necessary to obtain the required quantity or delivery. The award shall be made to the offeror whose proposal is determined to be the most advantageous to the school district, then to the offeror with the next most advantageous proposal, etc., until the total definite quantity required is reached.
  4. Regional awards to the offerors most advantageous to the school district in designated regions or locations only if the school district determines in writing that such awards are necessary to obtain the required quantity or delivery over widely scattered locations or a particular requirement is of a local nature.
- D. The school district shall notify all offerors of an award.
- E. The procurement file shall contain the basis on which the award or awards are made.
- F. After a contract is awarded, the school district shall return any bid security provided by the unsuccessful offerors.



- G. Upon execution of the contract, if performance and payment bonds were not required, or upon receipt of the specified bonds, if performance and payment bonds were required, the school district shall return any bid security provided by the successful offeror.
- H. Within 10 days after a contract is awarded, the school district shall make the procurement file, including all proposals, available for public inspection.
  - 1. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection.
  - 2. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.

**R7-2-1058. Request for Information**

- A. The school district may issue a request for information to obtain data about services or materials available to meet a specific need. Notice of the request for information shall be issued in accordance with ~~R7-2-1022~~ R7-2-1024(A) and R7-2-1024(C).
- B. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
- C. Information contained in a response to a request for information may be withheld from public inspection until the subsequent procurement is awarded or terminated, two years from the date of the vendor’s response, or upon commencement of a new procurement, whichever occurs first.
- D. There is no required format to be used for requests for information.

**R7-2-1068. Contract Award**

- A. As provided in subsection (B), the school district shall award a contract or contracts to the responsible offeror or offerors best qualified based on the evaluation factors set forth in the request for proposal and after making a written determination that the price is fair and reasonable. The school district shall not award a contract based solely on price. No factors or criteria may be used in proposal evaluation that are not set forth in the request for proposals.
- B. The school district shall award the contract to the best qualified offeror whose price is determined to be fair and reasonable for all services, except that the school district may make a multiple award if the request for proposals included notification that multiple contracts may be awarded, the school district’s basis for determining whether to award multiple contracts, and the criteria for selecting vendors for the multiple contracts.
- C. Before making a multiple award, the school district shall determine in writing that a multiple award is necessary and is advantageous to the school district and shall establish procedures for the use of the multiple awarded contracts to ensure that purchases are made from the contracts determined by the school district to be most advantageous to the school district in satisfying the school district’s requirements. A multiple award shall be limited to the least number of contracts the school district determines in writing to be necessary to meet the school district’s requirements, and may include the following types of awards:
  - 1. Award to the best qualified offeror whose price is determined to be fair and reasonable for individual line items, ~~or~~ groups of line items, or categories.
  - 2. Awards to the best qualified offerors whose prices are determined to be fair and reasonable for similar or identical line items, ~~or~~ groups of line items, or categories only if the school district determines in writing that such awards are necessary to obtain the required quantity or delivery, and the awards are limited to the least number of offerors necessary to meet the school district’s requirements.
  - 3. An incremental award only if the school district determines in writing that such an award is necessary to obtain the required quantity or delivery. The award shall be made to the best qualified person whose price is determined to be fair and reasonable, then to the next best qualified person whose price is determined to be fair and reasonable, etc., until the total definite quantity required is reached.
  - 4. Regional awards to the best qualified offerors whose prices are determined to be fair and reasonable in designated regions or locations only if the school district determines in writing that such an award is necessary to obtain the required quantity or delivery over widely scattered locations or a particular requirement is of a local nature.
- D. The school district shall notify all offerors of an award.
- E. The procurement file shall contain the basis on which the award or awards are made.
- F. Within 10 days after a contract is awarded, the school district shall make the procurement file, including all proposals, available for public inspection.
  - 1. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection.
  - 2. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.

**R7-2-1069. Guaranteed Energy Cost Savings Contracts**

- A. A school district may procure a guaranteed energy cost savings contract with a qualified provider through competitive sealed proposals in accordance with R7-2-1041 through R7-2-1050.
  - 1. The request for proposal evaluation factors required by R7-2-1042(A)(1)(h) shall include objective criteria for selecting the qualified provider, including the cost of the contract, the energy cost savings, the net projected energy savings, the quality of the technical approach, the quality of the project management plan, the financial solvency of the qualified provider and the experience of the qualified provider with projects of similar size and scope.
  - 2. Notwithstanding R7-2-1042(A)(1)(h), the request for proposals shall set forth the respective numerical weighting for each evaluation criterion.
  - 3. At the qualified provider’s expense, the proposal shall include an independent third-party validation of cost savings calculations associated with each proposed energy cost savings measure by a licensed, registered professional engineer, with credentials from the national association of energy engineers, who has demonstrated experience in energy analysis. The school district shall approve the selection of the independent third party.



4. A school district may enter into a guaranteed energy cost savings contract with a qualified provider if the school district determines that the energy savings project will pay for itself within the expected life of the energy cost savings measures implemented (according to the manufacturer's equipment standards), the term of the financial agreement or ~~twenty-five~~ 25 years, whichever is shortest, if the recommendations in the proposal are followed. The school district shall retain the cost savings achieved by a guaranteed energy cost ~~saving~~ savings contract, and these cost savings may be used to pay for the contract and project implementation.
5. A qualified provider is a person that is experienced in designing, implementing or installing energy cost savings measures, that has a record of established projects or measures of similar size and scope, that has demonstrated technical, operational, financial and managerial capabilities to design and operate cost savings measures and projects and that has the financial ability to satisfy guarantees for energy cost savings.
- B.** In selecting a contractor to perform any construction work related to performing the guaranteed energy cost savings contract, the qualified provider may:
  1. Develop and use a prequalification process for contractors.
  2. Require the contractor to demonstrate that the contractor is adequately bonded to perform the work and that the contractor has not failed to perform on a prior job.
- C.** At the selected qualified provider's expense, a study shall be performed by the selected qualified provider in order to establish the exact scope of the guaranteed energy cost savings contract, the fixed cost savings guarantee amount and the methodology for determining actual savings. The selected qualified provider will provide the school district with a final study report which validates that the fixed cost savings guarantee amount will meet or exceed the cost savings calculations contained within the original proposal. The study report shall be reviewed and approved by the school district before the actual installation of any equipment. The qualified provider shall transmit a copy of the approved study report to the school facilities board and the governor's office of energy policy.
- D.** The information to develop the energy baseline shall be derived from historical energy costs or actual energy measurements or shall be calculated from energy measurements at the facility where energy cost savings measures are to be installed or implemented. The baseline shall be established before the installation or implementation of energy cost savings measures.
- E.** One or more school districts may enter into a financing agreement with a qualified provider or a financial institution, trustee or paying agent for the purchase and installation or implementation of energy cost savings measures. Any required financing may be obtained as part of the original competitive sealed proposal process from the qualified provider, or from a third-party financing institution that is procured separately in accordance with Articles 10 and 11.
- F.** The selected qualified provider shall provide a performance bond in accordance with R7-2-1103(A)(1)(c).
- G.** The selected qualified provider shall make public information in the subcontractor's bids.
- H.** The guaranteed energy cost savings contract shall include the following:
  1. A requirement that, in determining whether the projected energy savings calculations have been met, the energy savings shall be computed by comparing the energy baseline before installation or implementation of the energy cost savings measures with the energy consumed after installation or implementation of the energy cost savings measures. The qualified provider and the school district may agree to make modifications to the energy baseline only for any of the following:
    - a. Changes in utility rates.
    - b. Changes in the number of days in the utility billing cycle.
    - c. Changes in the square footage of the facility.
    - d. Changes in the operational schedule of the facility.
    - e. Changes in facility temperature.
    - f. Significant changes in the weather.
    - g. Significant changes in the amount of equipment or lighting utilized in the facility.
    - h. Significant changes in the nature or intensity of energy use such as the change of classroom space to laboratory space.
  2. A payment schedule, with payments over a period of not more than the expected life of the energy cost savings measures implemented (according to the manufacturer's equipment standards), the term of the financial agreement or ~~twenty-five~~ 25 years, whichever is shortest.
  3. A requirement that all payments, except obligations on termination of the contract before its expiration, be made pursuant to the terms of the financing agreement.
  4. A written guarantee from the qualified provider that the energy savings will meet or exceed the costs of the energy cost savings measures over the expected life of the energy cost savings measures implemented (according to the manufacturer's equipment standards), the term of the financial agreement or ~~twenty-five~~ 25 years, whichever is shortest. The school district shall ensure that the contractor:
    - a. For the term of the guaranteed energy cost savings contract, prepares a measurement and verification report on an annual basis in addition to an annual reconciliation of savings.
    - b. Reimburses the school district for any shortfall of guaranteed energy cost savings on an annual basis.
    - c. Uses the international performance and measurement and verification protocol standards or the federal energy management program standards to validate the savings guarantee.
- I.** A school district may utilize a simplified energy performance contract for projects less than \$500,000. Simplified energy performance contracts are not required to include an energy savings guarantee and shall comply with all requirements in this Section except for subsections (D), (H)(1)(a) through (h) and (H)(4)(a) through (c).
- J.** This Section does not apply to the construction of new buildings.
- K.** For all projects under this Section, the school district shall report to the governor's office of energy policy ~~and the school facilities board~~:
  1. The name of the project.
  2. The qualified provider.
  3. The total cost of the project.



- 4. The expected energy cost savings and relevant escalators.
- 5. The agreed on baseline in the measurement and verification agreement in both kilowatt hours and dollars.

~~I.~~ For all projects under this Section, the school district shall annually report the actual energy cost savings to the school facilities board no later than October 15.

**R7-2-1087. Contract Clauses**

- A. The school district shall include in solicitations and contracts all contract clauses necessary to ensure the school district’s interests are addressed. The school district may modify clauses for inclusion in any particular school district contract, provided that any variations are supported by a written determination that states the circumstances justifying the variation and provided that notice of any material variation is stated in the solicitation.
- B. All contract clauses shall be consistent with the provisions of Articles 10 and 11.
- C. The school district may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance or other contract provisions.
- D. A contract for the procurement of construction or construction services shall include a provision for the recovery of damages related to expenses incurred by the contractor for a delay for which the school district is responsible, that is unreasonable under the circumstances and that was not within the contemplation of the parties to the contract. This subsection ~~shall does not be construed to~~ void any provision in the contract that requires notice of delays, provides for arbitration or any other procedure for settlement or provides for liquidated damages.
- E. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract or design professional service contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state is against the public policy of this state and is void and unenforceable.
- F. A provision or clause for contract termination in accordance with A.R.S. § 38-511. The school district may cancel the Contract within three years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the school district is or becomes at any time while the Contract, or an extension of the Contract is in effect an employee of or a consultant to any party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.
- G. A provision or clause for contract termination if it appears that any person has not complied with A.R.S. § 15-213(O). The school district or school purchasing cooperative may, by written notice, terminate the Contract, in whole or in part, if the school district or school purchasing cooperative determines that any person or vendor has offered, conferred or agreed to confer any personal gift or benefit on any employee of the school district or school purchasing cooperative who supervised or participated in the planning, recommending, selecting or contracting of the Contract.
- H. A provision or clause for contract termination for gratuities. The school district or school purchasing cooperative may, by written notice, terminate the Contract in whole or in part, if the school district or school purchasing cooperative determines that employment or a gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the school district or school purchasing cooperative for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including making of any determination or decision about contract performance.
- ~~F.I.~~ A covenant, clause or understanding in, collateral to or affecting a construction contract or subcontract or a design professional services contract or subcontract that purports to indemnify, to hold harmless or to defend the promisee of, from or against liability for loss or damage resulting from the negligence of the promisee or the promisee’s agents, employees or indemnitee is against the public policy of this state and is void.
- ~~G.J.~~ If a design professional provides work, services, studies, planning, surveys or other preparatory work in connection with a public building or improvement, the school district or property owner may require that the design professional services contract or subcontract require the design professional to indemnify and hold harmless the school district or property owner, and its officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such design professional or other persons employed or used by such design professional in the performance of the contract or subcontract.
- ~~H.K.~~ A design professional services subcontract entered into in connection with a public building or improvement may also require any design professional to indemnify and hold harmless the school district or property owner and the indemnified design professional who executed the subcontract, and their respective owners, officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such design professional, or persons employed or used by the indemnifying design professional in connection with the subcontract.
- ~~H.L.~~ Nothing in this Section shall prohibit the requirement of insurance coverage that complies with this Section, including the designation of the school district or property owner as an additional insured on a general liability insurance policy or as a designated insured on an automobile liability policy provided in connection with a construction contract or subcontract or design professional services contract or subcontract.
- ~~J.M.~~ Notwithstanding subsection ~~(F)(I)~~, a contractor who is responsible for the performance of a construction contract or subcontract may fully indemnify a person, firm, corporation, state or other agency for whose account the construction contract or subcontract is not being performed and that, as an accommodation, enters into an agreement with the contractor that permits the contractor to enter on or adjacent to its property to perform the construction contract or subcontract for others.
- ~~K.N.~~ Except as provided in subsections ~~(G)(J)~~, ~~(H)(K)~~ and ~~(H)(L)~~, a design professional services contract or subcontract entered into in connection with a public building or improvement shall not require that a design professional defend, indemnify, insure or hold harmless the school district or property owner or its employees, officers, directors, agents, contractors or subcontractors from any liability,



damage, loss, claim, action or proceeding, and any contract provision that is not permitted by subsections ~~(G)~~(J), ~~(H)~~(K) and ~~(I)~~(L) is against the public policy of this state and is void.

~~I-Q.~~ If any provision or condition contained in this Section conflicts with any provision of a contract between the school district and the federal government, such provision shall not apply to any construction contract or subcontract, or design professional services contract or subcontract to the extent such conflict exists, but all provisions of this Section with which there is no such conflict, shall apply.

~~M-P.~~ In this Section:

1. "Construction contract or subcontract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility, development, or other improvement to land.
2. "Design professional services" means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination of those services performed by or under the supervision of a design professional or any person employed by the design professional.
3. "Design professional services contract or subcontract" means a written or oral agreement relating to the planning, design, construction administration, study, evaluation, consulting, inspection, surveying, mapping, material sampling, testing or other professional, scientific or technical services furnished in connection with any actual or proposed study, planning, survey, environmental remediation, construction, improvement, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility, development or other improvement to land.
4. "Other persons employed or used" means a subcontractor to a contractor or design professional in any tier, or any other person or entity who performs work or design professional services, or provides labor, services, materials or equipment in connection with a construction contract or subcontract or design professional service contract or subcontract subject to this Section.

#### ARTICLE 11. SCHOOL DISTRICT PROCUREMENT (CONTINUED)

##### R7-2-1101. Qualified Select Bidders List

- A. The school district may use the qualified select bidders list method to determine the vendors who receive the notice of competitive sealed bidding for a construction contract. The qualified select bidders list shall be determined in accordance with this Section.
- B. Sealed prime contractor or construction materials supplier statements of qualifications shall be solicited through requests for qualifications.
  1. Notice of the request for qualifications shall be given by the school district pursuant to R7-2-1022 and R7-2-1024(C).
  2. Requests for qualifications shall be issued at least 21 days before the due date and time for submission.
  3. Use of the qualified select bidders list shall be restricted to the specific ~~projects~~ project identified in the request for qualifications.
  4. The qualified select bidders list shall consist of at least three prime contractors when a contractor is solicited or three construction material suppliers when material suppliers are solicited.
  5. The qualified select bidders list for any specific project is valid for one year but may be extended for an additional year, at the option of the school district.
- C. The request for qualifications shall include the following:
  1. Notice that all information and statements of qualifications submitted by persons will be made available for public inspection following the establishment of a qualified select bidders list.
  2. Instructions and information to persons concerning the statement of qualifications submission requirements, including the due date and time for submission, the address of the office at which the statements of qualifications are to be received, and any other special information.
  3. The anticipated evaluation period and selection of a qualified select bidders list.
  4. General information on the project site or sites, scope of work, schedule, evaluation criteria, project design and construction budget, or life cycle budget for a procurement that includes maintenance, operations, and finance services.
  5. The weight prescribed by the school district for each of the criteria to be used in making the evaluation.
  6. The criteria to be used in making the evaluation, which shall include at a minimum:
    - a. Person's capabilities and qualifications for performing the scope of work;
    - b. Person's project team, and key members' education, training and qualifications;
    - c. Method of approach, including subcontractor plan, safety plan;
    - d. Safety record and worker's compensation rate;
    - e. Projected construction schedule;
    - f. Current workload;
    - g. Five most recent representative examples of similar work along with references for each example;
    - h. Current bonding availability and capacity;
    - i. Any judgment or liens against the person within the last three years;
    - j. Any current unresolved bond claims against the person;
    - k. Any deficiency orders issued against the prime contractor by the Arizona Registrar of Contractors within the last three years; and
    - l. Any filing under the United States Bankruptcy Code, assignments for the benefit of creditors, or other measures taken for the protection against creditors during the last three years.
  7. The type of contract to be used.
  8. The name of the district representative or district representatives.
  9. The expiration date of the qualified select bidders list if less than one year.
  10. A statement that the school district reserves the right to conduct interviews as part of the evaluation process.



11. The date, time and location of any pre-submittal conference.
- D.** The school district may conduct a pre-submittal conference not less than 14 days prior to the statement of qualifications due date and time for the purposes of explaining the requirements of the request for qualifications.
- E.** Amendments to request for qualifications.
  1. An amendment to a request for qualifications shall be issued if necessary to do any of the following:
    - a. Make changes in the request for qualifications;
    - b. Correct defects or ambiguities;
    - c. Furnish to persons information given to any other person, if the information will assist the persons in submitting their statements of qualifications or if the lack of the information will prejudice the persons;
    - d. Provide additional information or instructions; or
    - e. Extend the due date and time if the school district determines that an extension is advantageous to the school district.
  2. Amendments to a request for qualifications shall be so identified and the school district shall ensure that the amendments are distributed or made available to all persons to whom the original request for qualifications was distributed or made available. The school district shall make a copy of the amendments to a request for qualifications available for public inspection at the school district office. If the school district posted the request for qualifications or a notice of the availability of a request for qualifications on a designated site on the Internet, then the school district shall post any amendments to the request for qualifications on the same designated site on the Internet. The school district shall also do one or more of the following:
    - a. Distribute the amendment, by any method reasonably calculated to ensure delivery, to all persons to whom the request for qualifications was distributed;
    - b. Make the amendment available and issue a notice of amendment which contains instructions for obtaining copies of the amendment. The notice of amendment shall be distributed, by any method reasonably calculated to ensure delivery, to all persons to whom the request for qualifications was distributed. Upon receipt of such notice of amendment, it is the responsibility of the person to obtain the amendment.
  3. Amendments to request for qualifications shall be issued within a reasonable time before the due date and time to allow persons to consider them in preparing their statements of qualifications. If the school district determines that the due date and time in the request for qualifications does not permit sufficient time for statement of qualifications preparation, the due date and time shall be extended in the amendment or, if necessary, by telephone, facsimile, email, or other communications methods, and confirmed in the amendment.
  4. A person shall acknowledge receipt of an amendment in the manner specified in the request for qualifications or the amendment on or before the due date and time.
- F.** Pre-submittal modification or withdrawal of statements of qualifications
  1. A person may modify or withdraw a statement of qualifications in writing at any time before the prescribed due date and time if the modification or withdrawal is received before the due date and time at the location designated in the request for qualifications for receipt of statements of qualifications.
  2. All documents concerning a modification or withdrawal of a statement of qualifications shall be retained in the procurement file.
- G.** Late statements of qualifications, late withdrawals and late modifications
  1. A statement of qualifications, modification or withdrawal is late if it is received at the location designated in the request for qualifications for receipt of statements of qualifications after the due date and time.
  2. A late statement of qualifications, late modification, or late withdrawal shall be rejected, unless the statement of qualifications, modification or withdrawal would have been timely received but for the action or inaction of school district personnel and is received before the qualified select bidders list is established.
  3. Upon receiving a late statement of qualifications, late modification, or late withdrawal, the school district shall record the time and date of receipt and promptly send notice of late receipt to the person. The school district may discard the document 30 days after the date on the notice unless the person requests the document be returned.
  4. All documents concerning acceptance of a late statement of qualifications, late modification, or late withdrawal shall be retained in the procurement file.
- H.** Receipt, opening and recording statements of qualifications
  1. A school district shall maintain a record of statements of qualifications and modifications received for each solicitation, shall record the time and date when each statement of qualifications or modification is received, and shall store each unopened statement of qualifications or modification in a secure place until the due date and time.
    - a. If required to confirm a vendor's inquiry regarding receipt of its statement of qualifications prior to the due date and time, a school district may open a statement of qualifications to identify the vendor. If this occurs, the school district shall record the reason for opening the statement of qualifications, the date and time the statement of qualifications was opened, and the solicitation number. The school district shall secure the statement of qualifications and retain it for public opening.
    - b. One or more witnesses shall be present for the opening of a statement of qualifications under subsection (H)(1)(a).
  2. Statements of qualifications and modifications shall be opened publicly at the date, time and location designated in the request for qualifications in the presence of one or more witnesses. The name of each person and any other relevant information deemed appropriate by the school district shall be recorded. The person opening the statements of qualifications and all witnesses shall sign the record.
    - a. The record created in subsection (H)(2) shall be available for public inspection.
    - b. The statements of qualifications shall not be open for public inspection until after the qualified select bidders list has been established.
- I.** Establishing the qualified select bidders list.
  1. The qualified select bidders list shall be established by determining the highest rated persons from the statements of qualifications received. This will be a minimum of three and a maximum of five.



2. For each qualified select bidders list process there will be established by the school district an evaluation committee composed of five members. These members shall include the project designer or construction material specifier, one member from the prime contracting or construction material supplier community that performs commensurate level work and is disinterested in this project, a school district facilities representative and two other members as designated by the school district.
  3. The evaluation committee shall review and score each statement of qualifications received according to the established evaluation criteria. The committee shall rank the statements of qualifications in accordance with the scores.
  4. The committee may conduct interviews before making the final determination of the qualified select bidders list. The committee shall document the interviews in writing.
  5. The committee shall select at least three and not more than five of the highest scoring persons for the qualified select bidders list.
  6. The district representative shall review the committee's qualified select bidders list. The district representative shall:
    - a. Accept the list as submitted;
    - b. Return the list for additional committee review;
    - c. Reject the list and terminate the process.
  7. A one-year eligibility period for the qualified select bidders list shall begin on the date the district representative accepts it. The qualified select bidders list may be extended one year at the option of the school district.
  8. Once the qualified select bidders list is established, a written notice of the selected persons shall be sent to all the persons that submitted statements of qualifications.
  9. After the establishment of the qualified select bidders list, a written record showing the basis for determining the qualified select bidders list shall be prepared by the district representative and retained in the procurement file. Within 10 days after the qualified select bidders list has been established, the school district shall make the procurement file, including all statements of qualifications, available for public inspection.
    - a. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection.
    - b. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.
  10. The qualified select bidders shall be provided an invitation for bids in accordance with R7-2-1024 to R7-2-1032. For any projects not identified in the request for qualifications, the school district may not solicit bids on those projects under the qualified select bidders list either in the initial one-year period or the one-year extension period.
  11. ~~Projects~~ The project identified in the request for qualifications shall have invitation for bids issued within the initial one-year period, or in the one-year extension period, to be awarded a contract under that qualified select bidders list.
- J.** Terminating the process for insufficient response or selection
1. In the event that less than three statements of qualifications are received, this procurement process shall cease and the school district may elect to reissue the request for qualifications or pursue other procurement methods.
  2. In the event that less than three persons are identified by the selection committee as being the most highly qualified, this procurement process shall cease and the school district may elect to reissue the request for qualifications or pursue other procurement methods.
- K.** A copy of the request for qualifications shall be made available for public inspection at the school district office.
- R7-2-1102. Bid Security**
- A.** Bid security shall be required for all competitive sealed bidding for construction contracts, and for all competitive sealed proposals for design-build construction services or job-order-contracting construction services procured pursuant to R7-2-1111, if the price, excluding the cost of any finance services, maintenance services, operations services, design services, preconstruction services, or other related services included in the contract, is estimated by the school district to exceed the amount established by R7-2-1002(A).
- B.** Invitations for bid on school district construction contracts and requests for proposals for design-build construction services or job-order-contracting construction services, shall require submission of bid security as follows:
1. For design-bid-build construction services, ten percent of the contractor's bid.
  2. For design-build construction services awarded by competitive sealed proposals pursuant to R7-2-1111, ten percent of the school district's construction budget for the project as stated in the request for proposals, excluding finance services, maintenance services, operations services, design services, preconstruction services or any other related services included in the contract.
  3. For job-order-contracting construction services awarded by competitive sealed proposals pursuant to R7-2-1111, the amount prescribed by the school district in the request for proposals, but not more than ten percent of the school district's reasonably estimated budget for construction that the school district believes is likely to actually be done during the first year under the contract, excluding any finance services, maintenance services, operations services, design services, preconstruction services or other related services included in the contract.
- C.** Acceptable bid security shall be limited to:
1. An annual or one-time bid bond executed and furnished as required by A.R.S. Title 34, Chapter 2 or 6, as applicable; or
  2. A certified ~~or cashier's~~ check.
- D.** The school district may issue a written determination to accept the bid security if the bid security fails to comply in a nonsubstantial manner when:
1. Only one bid or proposal is received and there is not sufficient time to rebid or resolicit proposals;
  2. The amount of the bid security submitted, although less than the amount required by the invitation for bids or request for proposals, is equal to or greater than the difference between the apparent low bid or highest scoring proposal and the next higher acceptable bid or next highest scoring proposal; or
  3. The bid security is inadequate as a result of modifying or correcting a bid in accordance with R7-2-1027 or R7-2-1030, if the bidder increases the amount of security to required limits within two days after notification.



- E. After the bids and proposals are opened, they are irrevocable for the period specified in the invitation for bids or request for proposals, except as provided in R7-2-1030. If a bidder or offeror is permitted to withdraw its bid before award, no action may be had against the bidder or offeror or the bid security.

**R7-2-1105. Progress Payments**

- A. Progress payments may be made by the school district to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding month if the contractor agrees to adhere to the provisions of A.R.S. § 41-2577(B), (D), and (F). Payment shall be made within 14 days after the estimate of the work is certified and approved, except that a percentage of all estimates shall be retained as provided in R7-2-1104. The estimate of the work shall be deemed received by the school district on submission of the estimate of the work to the school district or a person designated by the school district for the submission, review or approval of the estimate of the work. An estimate of the work submitted under this Section shall be considered approved and certified after seven days from the date of submission unless before that time the school district or designee prepares and issues a specific written finding detailing those items in the estimate of the work that are not approved and certified under the contract or design professional service contract. The school district may withhold an amount from the progress payment sufficient to pay the expenses the school district reasonably expects to incur in correcting the deficiency set forth in the written finding. No contract for construction or design professional service contract may materially alter the rights of any contractor, subcontractor, design professional or material supplier to receive prompt and timely payment as provided under this Section. On completion and acceptance of separate divisions of the contract or design professional service contract on which the price is stated separately in the contract, payment may be made in full including retained percentages, less deductions, unless a substitute security has been provided pursuant to R7-2-1104.
- B. Progress payments pursuant to subsection (A) are authorized for construction services and design professional services contracts. The requirements of subsection (A) apply only to amounts payable in a construction services contract for construction and in a contract for design services and do not apply to amounts payable in a ~~construction services~~ contract for ~~design services~~, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.
- C. A subcontractor or design professional may notify the school district, in writing, requesting that the subcontractor or design professional be notified by the school district in writing within five days from payment of each progress payment made to the contractor. The subcontractor's or design professional's request remains in effect for the duration of the subcontractor's or design professional's work on the project.
- D. If any payment to a contractor is delayed after the date due, interest shall be paid at the rate of one percent per calendar month, or a fraction of a calendar month, on such unpaid balance as may be due.

**R7-2-1108. Request for Qualifications**

- A. Notice of the need for construction services shall be given by the school district pursuant to R7-2-1022 and R7-2-1024(C). Such notice shall be issued not less than 14 days in advance of when responses shall be received. The notice shall:
  1. Contain a statement of the construction services required that adequately describes the procurement and specifies how a request for qualifications containing specific information on the procurement may be obtained;
  2. Specify whether the procurement is for a single contract or, for job-order-contracting construction services only, for multiple contracts; and
  3. If the procurement is for multiple job-order-contracting construction services contracts:
    - a. Specify that multiple contracts may or will be awarded;
    - b. Specify the number of contracts that may or will be awarded; and
    - c. Describe the construction services to be performed under each contract.
- B. The request for qualifications shall include the following:
  1. Instructions and information to persons concerning the statement of qualifications submission requirements, including the due date and time for receipt of statements of qualifications, the address of the office at which the statements of qualifications are to be received, and any other special information.
  2. In a procurement of construction-manager-at-risk construction services or design-build construction services to be performed at multiple locations, include:
    - a. A brief description of the construction services to be performed at each location;
    - b. The estimated budget for the construction services to be performed at each location; and
    - c. A schedule for the construction services to be performed at each location that shows the school district's intent to commence all construction at each location within thirty months after execution of the first contract for preconstruction services or other construction services at any of the locations.
  3. General information on the project site, scope of work, schedule, selection criteria, project design and construction budget, or life cycle budget for a procurement that includes maintenance, operations, and finance services.
  4. The criteria and the weight prescribed by the school district for each of the criteria to be used in making the evaluation.
    - a. All selection criteria shall be factors that demonstrate competence and qualifications for the type of construction services included in the procurement.
    - b. One of the criteria shall be the person's subcontractor selection plan or procedures to implement the school district's subcontractor selection plan.
    - c. If interviews will be held, state the selection criteria and relative weights to be used in selecting the persons to be interviewed. The request for qualifications may state the selection criteria and relative weights to be used in selecting the persons on the final list and in determining their order on the final list. The final list selection criteria and relative weights may be different than the selection criteria and relative weights used to determine the persons to be interviewed. The request for qualifications also shall state whether the school district will select the persons on the final list and their order on the final list solely through the results of the interview process or through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the school district's request for qualifications.



- d. If interviews will not be held, state the selection criteria and relative weights to be used in selecting the persons on the final list and in determining their order on the final list.
  5. Whether one contract or multiple contracts may or will be awarded.
    - a. For design-build construction services, construction-manager-at-risk construction services, and a single contract for job-order-contracting construction services, state that one person may or will be awarded the contract.
    - b. For multiple contracts for similar job-order-contracting construction services, state the number of contracts that may or will be awarded, the job-order-contracting construction services to be performed under each of the contracts, and that each of the multiple contracts will be awarded to a separate person.
  6. In a procurement where the contract is to be negotiated under R7-2-1110(D):
    - a. State that there will be a single final list of at least three and not more than five persons for a design-build, construction-manager-at-risk, or single job-order-contracting construction services award.
    - b. ~~State that there will be a single final list equal to the number of contracts that may or will be awarded and a number determined by the school district not to exceed five for~~ In a procurement for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons, state that there will be a single final list and the number of persons on the final list, which shall be the sum of the number of contracts that may or will be awarded, plus another number that is determined by the school district and that is not more than five.
  7. In a procurement in which the contract will be awarded under R7-2-1111:
    - a. State that there will be a single final list and that the number of persons on the final list will be three for a design-build or single job-order-contracting construction services award.
    - b. ~~State that there will be a single final list equal to the number of contracts that may or will be awarded and a number determined by the school district not to exceed five for~~ In a procurement for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons, state that there will be a single final list and the number of persons on the final list, which shall be the sum of the number of contracts that may or will be awarded, plus another number that is determined by the school district and that is not more than five.
  8. The type of contract to be used.
  9. The name of the district representative or district representatives and the publicly available location of the school district's protest policy and procedures.
  10. If the school district will hold interviews as part of the selection process:
    - a. State that interviews will be held and that the interviews will be with at least three and not more than five persons for a design-build, construction-manager-at-risk, or single job-order-contracting construction services procurement.
    - b. ~~State that interviews will be held and that the interviews will be with a specified number of persons in a procurement of~~ In a procurement for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons, state that interviews will be held and that the interviews will be with a specified number of persons. The specified number shall be stated in the request for qualifications, shall be determined by the school district and shall be the sum of the number of contracts that may or will be awarded and a plus another number that is determined by the school district and that is not more than five.
  11. The manner in which subcontractors shall be selected, either:
    - a. A requirement that each person submit a proposed subcontractor selection plan and a requirement that the proposed subcontractor selection plan shall select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone; or
    - b. A subcontractor selection plan adopted by the school district that applies to the person that is selected to perform the construction services and that requires subcontractors to be selected based on qualifications alone or on a combination of qualifications and price and not based on price alone and a requirement that each person shall submit a description of the procedures it proposes to use to implement the school district's subcontractor selection plan.
  12. Notice that all information and statements of qualifications submitted by persons will be made available for public inspection after the school district has entered into a single contract or all of the multiple contracts.
- C. A copy of the request for qualifications shall be made available for public inspection at the school district office.

**R7-2-1117. Procurement of Specified Professional Services**

- A. Specified professional services, which is defined in R7-2-1001(120), as services of an architect, engineer, land surveyor, assayer, geologist and landscape architect, shall be procured as provided in R7-2-1117 through R7-2-1123, except as authorized in R7-2-1033, R7-2-1053, R7-2-1055, and R7-2-1122.
- B. Prior to public notice of the need for specified professional services, the school district shall determine that the services to be acquired are specified professional services.
- C. In the procurement of specified professional services:
  1. The school district shall specify whether the procurement is for a single contract or for multiple contracts. Multiple contracts may be awarded to separate persons or may be awarded to a single person as specified in the request for qualifications.
  2. The school district and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this Section and R7-2-1120 or R7-2-1121, including the selection of persons to be interviewed, the selection of persons to be on the final list, in determining the order of preference of persons on a final list or for any other purpose in the selection process except as provided in R7-2-1121.
  3. In determining the persons to participate in any interviews, in determining the persons to be on the final list, and in determining the order on the final list, the selection committee shall use and consider only the criteria and weighting of criteria in the request for qualifications. No other factors or criteria may be used in the evaluation, determinations and other actions.
  4. If the school district enters into the number of contracts specified in the request for qualifications, the procurement ends. After that time the school district may not use the procurement or any final list in the procurement as the basis for entering into a contract with any other person that participated in the procurement.



- 5. Notwithstanding any other provision specifying the number of persons to be interviewed, the number of persons to be on a final list, or any other numerical specification in this Section or R7-2-1121:
  - a. If a smaller number of persons respond to the request for qualifications or if one or more persons drop out of the procurement so that there is a smaller number of persons participating in the procurement, the school district, as the school district determines necessary and appropriate, may elect to proceed with the participating persons if there are at least two participating responsive and responsible persons. Alternatively, the school district may elect to terminate the procurement.
  - b. As to a request for qualifications to be negotiated pursuant to R7-2-1121(D), if only one responsive and responsible person responds to the request for qualifications, or if one or more persons drop out of the procurement so that only one responsive and responsible person remains in the procurement, the school district may elect to proceed with the procurement with only one person if the governing board determines in writing that the negotiated fee is fair and reasonable and that either other prospective persons had reasonable opportunity to respond or there is not adequate time for a resolicitation.
  - c. If a person on the final list withdraws or is removed from the procurement and the selection committee determines that it is advantageous to the school district, the selection committee may replace that person on the final list with another person that submitted qualifications in the procurement and that is selected as the next most qualified.
- D. The request for qualifications shall:
  - 1. Provide instructions and information to persons concerning the statement of qualifications submission requirements, including the due date and time for receipt of statements of qualifications, the address of the office at which the statements of qualifications are to be received, and any other special information.
  - 2. State whether one contract or multiple contracts may or will be awarded.
    - a. If one contract will be awarded, state that one contract may or will be awarded, describe the services to be performed under the contract and state that one person may or will be awarded the contract.
    - b. If multiple contracts may or will be awarded, state the number of contracts that may or will be awarded, the services to be performed under each of the multiple contracts, and either that each contract will be awarded to a separate person or that all of the contracts will be awarded to the same person.
  - 3. State the number of persons to be included on the final list.
    - a. If a single contract will be awarded, state that there will be a single final list of at least three and not more than five persons.
    - b. If multiple contracts will be awarded to a single person, state that there will be a single final list of at least three and not more than five persons.
    - c. ~~If In a procurement for multiple contracts for similar specified professional services will to be awarded to separate persons, state that there will be a single final list equal to and the number of persons on the final list, which shall be the sum of the number of contracts that may or will be awarded and a plus another number that is determined by the school district and that is not to exceed more than five.~~
    - d. If multiple contracts for different specified professional services will be awarded to separate persons, state that there will be a separate final list for each type of specified professional services and that the number of persons on each final list will be equal to the number of contracts that may or will be awarded for each type of specified professional services ~~and plus a~~ number determined by the school district not to exceed five.
  - 4. State the selection criteria and relative weight to be used. All selection criteria shall be factors that demonstrate competence and qualifications for the type of specified professional services included in the procurement.
    - a. If interviews will be held, state the selection criteria and relative weights to be used in selecting the persons to be interviewed. The request for qualifications may state the selection criteria and relative weights to be used in selecting the persons on the final list and in determining their order on the final list. The final list selection criteria and relative weights may be different than the selection criteria and relative weights used to determine the persons to be interviewed. The request for qualifications also shall state whether the school district will select the persons on the final list and their order on the final list solely through the results of the interview process or through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the request for qualifications.
    - b. If interviews will not be held, state the selection criteria and relative weights to be used in selecting the persons on the final list and in determining their order on the final list.
  - 5. State whether interviews will be held.
    - a. If a single contract will be awarded, state that there will be interviews with at least three and not more than five persons.
    - b. If multiple contracts will be awarded to a single person, state that there will be interviews with at least three and not more than five persons.
    - c. ~~If In a procurement for multiple contracts for similar specified professional services will to be awarded to separate persons, state that there will be interviews will be held and that the interviews will be with a specified number of persons. The specified number shall be stated in the request for qualifications, shall be determined by the school district and shall be the sum of equal to the number of contracts that may or will be awarded, and a plus another number that is determined by the school district and that is not to exceed more than five.~~
    - d. If multiple contracts for different specified professional services will be awarded to separate persons, state that interviews will be held and that the interviews will be with a specified number of persons. The specified number shall be stated in the request for qualifications, shall be determined by the school district, shall be at least three times the number of contracts that may or will be awarded and shall not be more than five times the number of contracts that may or will be awarded.
  - 6. The name of the district representative or district representatives and the publicly available location of the school district's protest policy or procedure.
  - 7. Notice that all information and statements of qualifications submitted by persons will be made available for public inspection after the school district has entered into a single contract or all of the multiple contracts.
- E. Statements of qualifications shall be received and opened in accordance with R7-2-1045. Late statements of qualifications, late modifications, or late withdrawals shall be considered in accordance with R7-2-1044 and R7-2-1049.



F. A copy of the request for qualifications shall be made available for public inspection at the school district office.

**R7-2-1122. Specified Professional Services Contracts Not Exceeding Certain Amounts**

- A. A school district may procure a single contract or multiple contracts for specified professional services under this Section if the contract is for specified professional services by an architect or architect firm and the contract amount is \$250,000 or less or if the contract is for specified professional services by a person other than an architect and the contract amount is \$500,000 or less. For such procurements, the school district shall encourage persons engaged in the lawful practice of the profession to submit annually a statement of qualifications and experience.
- B. For each procurement of specified professional services under this Section, the school district shall establish a selection committee pursuant to R7-2-1120.
- C. The selection committee shall evaluate current statements of qualifications and experience on file with the school district, together with those that may be submitted by other persons regarding the procurement.
- D. The school district and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this Section, including the selection of the persons to be interviewed, the selection of persons to be on a final list, in determining the order of preference of persons on a final list or for any other purpose in the selection process, except as provided in subsection (F).
- E. If possible and practicable, the selection committee shall conduct interviews regarding the procurement and the relative methods of furnishing the required specified professional services and, if possible, shall select, in order of preference and based on criteria established and published by the selection committee, one or more final lists of the persons deemed to be the most qualified to provide the specified professional services required. The selection committee shall base the selection of each final list and the order of preference on demonstrated competence and qualifications only.
1. If the procurement is for a single contract or if the procurement is for multiple contracts to be awarded to a single person, there shall be one final list of three persons.
  2. If the procurement is for multiple contracts for different specified professional services to be awarded to separate persons, there shall be a separate final list of three persons for each contract.
  3. ~~If the~~ In a procurement ~~is~~ for multiple contracts for ~~the same similar~~ specified professional services to be awarded to separate persons, there shall be one final list ~~equal to~~ and the number of persons on the final list shall be the number of contracts, plus another number that may or will be awarded and a number is determined by the school district and that is not to exceed more than five.
- F. The school district shall enter into negotiations with the highest qualified person on each final list or, in the case of a single final list for multiple contracts for the same specified professional services to be awarded to separate persons, the school district shall enter into negotiations with a number of the highest qualified persons on the final list equal to the number of contracts that may or will be awarded.
1. Negotiations shall include consideration of compensation and other contract terms that the school district determines to be fair and reasonable to the school district. In making this determination, the school district shall take into account the estimated value, the scope, the complexity and the nature of the specified professional services to be rendered.
  2. If the school district is unable to negotiate a satisfactory contract with a person with whom the school district is negotiating at a price and on other contract terms the school district determines to be fair and reasonable to the school district, the school district shall formally terminate negotiations with that person.
  3. The school district may undertake negotiations with the next most qualified person on the final list in sequence until an agreement is reached or a determination is made to reject all persons on the final list.
  4. If the school district terminates negotiations with a person on a final list and commences negotiations with another person on the final list, the school district shall not in that procurement recommence negotiations or enter into a contract or contracts with any person with whom the school district has terminated negotiations.

**R7-2-1131. Material Management and Disposition**

- A. The school district shall ascertain or verify that materials, services, or construction items procured by the school district conform to specifications as set forth in the solicitation.
- B. The school district shall determine the fair market value of excess and surplus material.
- C. Disposition of surplus materials.
1. Except as provided in A.R.S. § 15-342(7) related to sales or leases to the state, a county, a city, another school district, or a tribal government agency, and A.R.S. § 15-342(18) related to the disposition of surplus or outdated learning materials, educational equipment and furnishings, surplus materials, regardless of value, shall be offered through competitive sealed bids, public auction, on-line sales, established markets, trade in, posted prices or state surplus property. If unusual circumstances render the above methods impractical, the school district may employ other disposition methods, including appraisal or barter, provided the school district makes a written determination that such procedure is advantageous to the school district. Only United States Postal Money Orders, certified checks, cashiers' checks or cash shall be accepted for sales of surplus material unless otherwise approved by the school district.
  2. Competitive sealed bidding.
    - a. Notice for sale bids shall be publicly available from the school district at least 10 days before the due date set for bids. Notice of the sale bids shall be provided to prospective bidders, including those bidders on lists maintained by the school district pursuant to R7-2-1023. The notice for sale bids shall list the materials offered for sale, their location, availability for inspection, the terms and conditions of sale and instructions to bidders including the bid due date and time. Bids shall be opened publicly pursuant to the requirements of R7-2-1029.
    - b. The award shall be made in accordance with the provisions of the notice for sale bids to the highest responsive and responsible bidder, provided that the price offered by such bidder is acceptable to the school district. If the school district determines that the bid is not advantageous to the school district, the school district may reject the bids in whole or in part and



may resolicit bids or the school district may negotiate the sale, provided that the negotiated sale price is higher than the highest responsive and responsible bidder's price.

- 3. Auctions shall be advertised ~~at least two times prior to the auction date in a the official newspaper of the county as defined prescribed in A.R.S. § 11-255 or a newspaper of general circulation, in accordance with A.R.S. § 41-2533. Advertisements shall be at least seven days apart.~~ The ~~second~~ publication shall not be less than ~~seven days~~ 14 days before the auction date. All the terms and conditions of any sale shall be available to the public at least 24 hours prior to the auction date. The school district or any agent acting on the school district's behalf may also advertise the auction in any other manner determined advantageous to the school district.
- 4. Internet-based on-line sales shall not be subject to the advertisement requirements in subsection (C)(3). For such disposal services, the school district shall post and maintain a notice explaining the use of Internet-based on-line sales on a designated site on the Internet. The notice shall include:
  - a. The name of the on-line sales provider and the designated site on the Internet where potential buyers may obtain information or participate in the on-line auctions;
  - b. A link to the Internet-based on-line sales service;
  - c. A link to the terms and conditions of sale;
  - d. Instructions for bidding on the Internet-based on-line sales site; and
  - e. A period of not less than 14 days for each Internet-based on-line sale during which persons may submit offers to purchase the specified materials.
- 5. Before surplus materials are disposed of by trade-in to a vendor for credit on an acquisition, the school district shall approve such disposal. The school district shall base this determination on whether the trade-in value is expected to exceed the value realized through the sale or other disposition of such materials.
- 6. An employee of the school district or a governing board member, or an employee of a school district's agent conducting an auction on behalf of the school district, shall not directly or indirectly purchase or agree with another person to purchase surplus property if said employee or board member is, or has been, directly or indirectly involved in the purchase, disposal, maintenance, or preparation for sale of the surplus material.
- 7. State surplus property manager. The school district may enter into an agreement with the State Surplus Property Manager for the disposition of materials pursuant to Article 8 of the Arizona Procurement Code (A.R.S. § 41-2601 et seq.) and the rules adopted thereunder.
- 8. Pursuant to A.R.S. § 15-342(35), a school district may offer to sell outdated learning materials, educational equipment or furnishings at a posted price commensurate with the value of the items to pupils who are currently enrolled in that school district before those materials are offered for public sale.

**R7-2-1133. Authority for Transfer of Material**

Notwithstanding any ~~provision~~ of law to the contrary, the governing board may secure the transfer of surplus materials and obligate its monies to the extent necessary to comply with the laws and conditions of such transfers.

**R7-2-1142. Filing of a Protest**

- A. Any interested party may protest a solicitation issued by the school district, a determination that a proposal is unacceptable, or the proposed award or the award of a school district contract. Protests shall be filed with the district representative.
- B. Content of protest. The protest shall be in writing 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. The interested party shall supply ~~promptly~~ any other information requested by the district representative within 10 days of the request.
- D. The interested party may file a written request with the district representative for an extension of the time limit for providing additional information set forth in subsection (C). The written request shall be filed before the expiration of the time limit set forth in subsection (C) and shall set forth good cause as to the specific reason that the interested party is unable to provide the additional information with the 10 days. The district representative 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.

**R7-2-1144. Stay of Procurements During the Protest**

The district representative may stay all or part of the procurement or contract if it is determined that there is a reasonable probability the protest will be upheld or that a stay is advantageous to the school district. The district representative shall notify the successful contractor if award has been made or, if no award has been made, all interested parties of the stay in writing no later than the time of issuance of the district representative's decision in accordance with R7-2-1145.

**R7-2-1145. Decision by the District Representative**

- A. The district representative shall have the authority granted to the district representative by the governing board to settle and resolve a protest.
- B. The district representative shall issue a written decision within ~~42~~ 14 days after a protest has been filed, or after additional information requested by the district representative has been submitted, pursuant to R7-2-1142. The decision shall include:
  - 1. A statement of the decision of the district representative with supporting rationale; and
  - 2. A paragraph substantially as follows: "This is the decision of the district representative of the \_\_\_\_\_ School District. The decision may be appealed to a hearing officer. If you appeal, you must file a written notice of appeal with the district representative within ~~44~~ 30 days from the date of the decision."



- C. The district representative shall furnish a copy of the decision to the interested party by any method that provides evidence of receipt.
- D. On agreement of all interested parties, the time limit for decisions set forth in subsection (B) may be extended by the district representative for good cause for a reasonable time not to exceed ~~14~~ an additional 30 days. The district representative 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 will be issued.
- E. If the district representative fails to issue a decision within the time limits set forth in subsections (B) or (D), the interested party may proceed as if the district representative had issued an adverse decision.

**R7-2-1147. Appeals to a Hearing Officer**

- A. An appeal to a hearing officer from a decision entered or deemed to be entered by the district representative shall be filed with the district representative within ~~14~~ 30 days from the date of decision.
- B. Content of appeal. The appeal shall contain:
  - 1. The information set forth in R7-2-1142(B); and
  - 2. The precise factual or legal error in the decision of the district representative from which an appeal is taken.
- C. All costs associated with conducting a hearing, including the costs of the hearing officer, shall be paid by the school district. If the hearing officer decides in favor of the school district, the other party shall reimburse the school district for the costs of the hearing within 30 days of receipt of a copy of the hearing officer's invoice.
- D. The Executive Director of the State Board of Education ("Executive Director") shall prepare and maintain a list of individuals who meet the qualifications specified in R7-2-1185 to serve as hearing officers.
- E. A hearing officer may be selected by mutual agreement of both parties. If the parties are unable to mutually agree on a hearing officer, three hearing officers shall be selected randomly by the Executive Director and shall be screened to determine availability and possible bias. Once the Executive Director has selected three hearing officers who are available and show no evidence of bias, the three names shall be provided to both parties. Both parties have the opportunity to strike one name from the list provided, but shall do so within 14 calendar days from the date on which the Executive Director provided the list to the parties. If after the time period for striking a hearing officer has passed and more than one person remains on the list, the Executive Director shall select one of the remaining individuals on the list as the hearing officer unless either party objects for cause and provides such reason in writing to the Executive Director. If after the time period for striking a hearing officer has passed and there is only one person remaining on the list, the remaining individual shall be named as the hearing officer unless either party objects for cause and provides such reason in writing to the Executive Director. Objections for cause shall require specific evidence that the individual does not meet the criteria specified in R7-2-1185. The Executive Director shall review the evidence submitted and determine the qualifications of the individual. If the Executive Director determines that the individual is not qualified to serve as the hearing officer, the Executive Director shall repeat the process and select three additional hearing officers to be provided to the parties.
- F. Issuance of a school district purchase order shall constitute the official selection date of the hearing officer.

**R7-2-1149. Stay of Procurement During Appeal**

If an appeal is filed and the procurement or contract was stayed by the district representative pursuant to R7-2-1144, the filing of an appeal shall automatically continue the stay unless the hearing officer makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the school district. If no such determination is made, the stay shall automatically end upon written decision of the hearing officer pursuant to R7-2-1151 or R7-2-1181.

**R7-2-1150. District Representative's Response**

- A. The district representative shall ~~prepare file~~ a complete response to the appeal within ~~14~~ 21 days from the date the appeal is filed or within five days after the hearing officer has been selected, whichever is later. ~~The district representative's response shall be filed with the hearing officer within five days after the hearing officer is selected.~~ At the same time, the district representative shall furnish a copy of the response to the appellant and to any interested party.
- B. The district representative may submit a written request to the hearing officer for an extension of the period for submission of response, identifying the reasons for the extension. The hearing 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 a response. The hearing officer shall notify the district representative and the interested party of any extension.
- ~~B-C.~~ The interested party shall file comments on the district representative's response with the hearing officer within 10 days after receipt of the response. The interested party shall provide copies of the comments to the district representative and other interested parties.
- ~~C-D.~~ The interested party may submit a written request to the hearing officer for an extension of the period for submission of comments, identifying the reasons for the extension. The hearing 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. The hearing officer shall notify the district representative and the interested party of any extension.

**R7-2-1155. Resolution of Contract Claims and Controversies**

- A. The district representative shall have the authority granted to the district representative by the governing board to settle and resolve contract claims and controversies including claims relating to assignees of the contractor.
- B. The district representative shall receive prior written approval of the governing board for the settlement or resolution of a claim ~~of \$50,000 or greater~~ exceeding the dollar amount specified in A.R.S. § 41-2535.
- C. Appeals from decisions of the district representative may be made to the hearing officer pursuant to R7-2-1158.
- D. A claimant shall file a contract claim with the district representative 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.

**R7-2-1156. District Representative’s Decision**

- A. If a controversy cannot be resolved by mutual agreement, the district representative shall issue a written decision within no more than ~~42~~ 60 days from receipt of the contractor’s written request for a decision. Before issuing a written decision, the district representative shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B. Decision of the district representative. The district representative shall furnish a copy of the decision to the contractor by any method that provides evidence of receipt. The decision shall include:
  - 1. A description of the 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 district representative’s decision, with supporting rationale; and
  - 5. A paragraph substantially as follows:  
 “This is the decision of the district representative of the \_\_\_\_\_ School District. This decision may be appealed to a hearing officer. If you appeal, you must file a written notice of appeal with the district representative within ~~14~~ 30 days from the date of decision.”

**R7-2-1157. Issuance of a Timely Decision**

- A. On agreement of all interested parties, the time limit for decisions set forth in R7-2-1156(A) may be extended for good cause for a reasonable time not to exceed 14 days. The district representative shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- B. If the district representative fails to issue a decision within ~~42~~ 60 days after the request is filed or within the time prescribed under subsection (A), the contractor may proceed as if the district representative had issued an adverse decision.

**R7-2-1158. Appeals to a Hearing Officer**

- A. An appeal from a decision entered or deemed to be entered by the district representative on a contract claim or controversy shall be filed with the district representative within ~~14~~ 30 days from the date of decision.
- B. The appeal shall contain the basis for the precise factual or legal error in the decision of the district representative from which an appeal is taken.
- C. The district representative shall ~~prepare~~ file a complete response to the appeal within ~~14~~ 21 days from the date the appeal is filed or within five days after the hearing officer has been selected, whichever is later. ~~The district representative’s response shall be filed with the hearing officer within five days after the hearing officer is selected.~~ At the same time, the district representative shall furnish a copy of the response to the appellant and to any interested party.
- D. ~~The district representative may submit a written request to the hearing officer for an extension of the period for submission of response, identifying the reasons for the extension. The hearing 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 a response. The hearing officer shall notify the district representative and the interested party of any extension.~~
- E. ~~The interested party shall file comments on the district representative’s response with the hearing officer within 10 days after receipt of the response. The interested party shall provide copies of the comments to the district representative and other interested parties.~~
- F. ~~The interested party may submit a written request to the hearing officer for an extension of the period for submission of comments, identifying the reasons for the extension. The hearing 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. The hearing officer shall notify the district representative and the interested party of any extension.~~
- ~~D-G.~~ All costs associated with conducting a hearing, including the costs of the hearing officer, shall be paid by the school district. If the hearing officer decides in favor of the school district, the other party shall reimburse the school district for the costs of the hearing within 30 days of receipt of a copy of the hearing officer’s invoice.
- ~~E-H.~~ The Executive Director of the State Board of Education (“Executive Director”) shall prepare and maintain a list of individuals who meet the qualifications specified in R7-2-1185 to serve as hearing officers.
- ~~F-I.~~ A hearing officer may be selected by mutual agreement of both parties. If the parties are unable to mutually agree on a hearing officer, three hearing officers shall be selected randomly by the Executive Director and shall be screened to determine availability and possible bias. Once the Executive Director has selected three hearing officers who are available and show no evidence of bias, the three names shall be provided to both parties. Both parties have the opportunity to strike one name from the list provided, but shall do so within 14 calendar days from the date on which the Executive Director provided the list to the parties. If after the time period for striking a hearing officer has passed and more than one person remains on the list, the Executive Director shall select one of the remaining individuals on the list as the hearing officer unless either party objects for cause and provides such reason in writing to the Executive Director. If after the time period for striking a hearing officer has passed and there is only one person remaining on the list, the remaining individual shall be named as the hearing officer unless either party objects for cause and provides such reason in writing to the Executive Director. Objections for cause shall require specific evidence that the individual does not meet the criteria specified in R7-2-1185. The Executive Director shall review the evidence submitted and determine the qualifications of the individual. If the Executive Director determines that the individual is not qualified to serve as the hearing officer, the Executive Director shall repeat the process and select three additional hearing officers to be provided to the parties.
- J. Issuance of a school district purchase order shall constitute the official selection date of the hearing officer.

**R7-2-1181. Hearing Procedures**

- A. If a hearing is required or permitted under Articles 10 and 11, this Section shall apply. Hearing officers shall be selected pursuant to R7-2-1147(D) and (E) or R7-2-1158(E) and (F).
- B. The Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) shall apply where the Act is not inconsistent with Articles 10 and 11.



- C. The hearing officer shall arrange for a ~~prompt~~ hearing to be held within 30 days of receiving required responses and comments from both parties and notify the parties in writing of the time and place of the hearing.
- D. The hearing officer may:
1. Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
  2. Require parties to state their positions concerning the various issues in the proceeding;
  3. Require parties to produce for examination those relevant witnesses and documents under their control;
  4. Rule on motions and other procedural items on matters pending before such officer;
  5. Regulate the course of the hearing and conduct of participants;
  6. Establish time limits for submission of motions or memoranda;
  7. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
    - a. Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
    - b. Excluding all testimony of an unresponsive or evasive witness; and
    - c. Expelling person from further participation in the hearing;
  8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
  9. Administer oaths or affirmations.
- E. A transcribed record of the hearing shall be made available at cost to any requesting party.
- F. Decision by the hearing officer. A decision by the hearing officer shall be sent within 30 days after the conclusion of the hearing to all parties by any means evidencing receipt. A decision shall contain:
1. A statement of facts;
  2. A statement of the decision with supporting rationale; and
  3. A statement that the parties may file a motion for rehearing within 15 days from the date a copy of this decision is served upon the party.

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## NOTICES OF RULEMAKING DOCKET OPENING

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This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening.

A docket opening is the first part of the administrative rulemaking process. It is an "announcement" that the agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires the publication of the Notice of Rulemaking Docket Opening.

Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. Many times an agency may file the Notice of Rulemaking Docket Opening with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

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### NOTICE OF RULEMAKING DOCKET OPENING DEPARTMENT OF HEALTH SERVICES OCCUPATIONAL LICENSING

[R20-49]

- 1. Title and its heading:** 9, Health Services  
**Chapter and its heading:** 16, Department of Health Services - Occupational Licensing  
**Articles and their headings:** 8, Community Health Workers  
**Section numbers:** To be determined

**2. The subject matter of the proposed rules:**

Pursuant to the rulemaking moratorium established by Executive Order 2019-01, the Arizona Department of Health Services ("Department") received an exception approval from the moratorium to revise rules in Title 9, A.A.C. 16, Article 8, Community Health Workers. The Department plans to create rules in accordance with A.R.S. Title 36, Chapter 6, Article 7.1 that are necessary for the proper administration of the enforcement of Article 7.1, including rules that do the following: Prescribe the scope of practice and the core competencies of certified community health workers; Describe and define reasonable and necessary minimum qualifications for certified community health workers; Establish standards and requirements for the establishment of certified community health worker's education and training programs; Adopt standards and requirements for the approval or acceptance of continuing education courses and programs for the renewal of a Certificate; Establish minimum education, training, experience and other qualifications that a certified community health worker must possess to qualify as a trainer in any education, training or continuing education program for certified community health workers; Establish the criteria for granting, denying, suspending, and revoking a Certificate; and Establish and collect nonrefundable fees for certification as a community health worker.

The Department will promulgate rules in 9 A.A.C. 16, Article 8 through regular rulemaking according to A.R.S. Title 41, Chapter 6. The Department anticipates that the rules *may* increase regulatory burden or cost on some affected persons. However, the Department believes that the benefits of the rules will far outweigh any potential cost. The proposed amendments will conform to rulemaking format and style requirements of the Council and the Office of the Secretary of State. The Department may add, delete, or modify Sections, as necessary.

**3. A citation to all published notices relating to the proceeding:**

None

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

Name: Rachael Salley, Chief  
Address: Department of Health Services  
Office of Chronic Disease  
150 N. 18th Ave., Suite 310  
Phoenix, AZ 85007-3232  
Telephone: (602) 364-0841  
Fax: (602) 542-1890  
E-mail: Rachael.Salley@azdhs.gov  
or  
Name: Stephanie Elzenga, Acting Chief  
Address: Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007-3232  
Telephone: (602) 542-8819  
Fax: (602) 364-1150  
E-mail: Stephanie.Elzenga@azdhs.gov



**5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**

Written comments will be accepted at the addresses listed in item #4 until the close of record, which has not yet been determined. The Department has not scheduled any oral proceedings at this time.

**6. A timetable for agency decisions or other action on the proceeding, if known:**

To be announced in the Notice of Proposed Rulemaking.

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## NOTICES OF PUBLIC INFORMATION

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Notices of Public Information contain corrections that agencies wish to make to their notices of rulemaking; miscellaneous rulemaking information that does not fit into any other category of notice; and other types of information required by statute to be published in the Register.

Because of the variety of Notices of Public Information, the Office of the Secretary of State has not established a specific publishing format for these notices. We do however require agencies to use a numbered list of questions and answers and follow our filing requirements by presenting receipts with electronic and paper copies.

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### NOTICE OF PUBLIC INFORMATION DEPARTMENT OF ENVIRONMENTAL QUALITY SAFE DRINKING WATER

[M20-20]

- 1. Name of the Agency:** Department of Environmental Quality  
**Title and its heading:** 18, Environmental Quality  
**Chapter and its heading:** 4, Department of Environmental Quality – Safe Drinking Water  
**Article and its heading:** 8, Technical Assistance  
**Section and its heading:** R18-4-803, Master Priority List

**2. The public information relating to the listed statute:**

Pursuant to A.R.S. § 49-358, the Arizona Department of Environmental Quality (Department) has developed a water system compliance assistance program to assist public water systems in complying with state and federal laws, rules and regulations regarding safe drinking water. As of March 12, 2019, there are 1,516 public water systems (PWS) in operation in Arizona. Of this universe of water systems, 1,449 (96%) are classified as “small water systems” serving 10,000 or fewer persons. Historically, these small-and medium-sized public water systems have accrued the vast majority of Arizona’s reported drinking water violations (e.g., contaminant exceedance violations, no certified operator, missed monitoring). The capacity development program works to ensure that public water systems possess the technical, managerial and financial capacity to operate in accordance with all the drinking water rules and regulation. Capacity development also reaches out to “small public water systems” needing technical assistance which is provided by the Department or through third party contractors.

**3. Draft Master Priority List**

Public water systems are identified for technical assistance on the basis of the Master Priority List (MPL) which is updated annually in March. The criteria used to determine the need for assistance include the measures used in determining the technical, managerial and financial (TMF) capacity of existing PWSs. Additional criteria include the public water system’s score on the U.S. Environmental Protection Agency’s (EPA) Enforcement Targeting Tool (ETT), system classification type, population served, and violations history. Technical assistance contracts are typically awarded to prepare one of several deliverables: a TMF capacity assessment of the water system, an evaluation of compliance options for water systems with maximum contaminant level (MCL) violations or the design of a treatment system to address an ongoing MCL violation. As funding is available, the Department will award technical assistance to those PWSs with the highest MPL rankings and who are willing to work with the Department and its technical assistance providers. The Water Infrastructure Financing Authority (WIFA) also uses the MPL to identify possible candidates for additional technical assistance and/or financial assistance (e.g., low interest loans, technical assistance design grants, for-fee principle).

Pursuant to A.A.C. R18-4-803(D), the Department is publishing this Notice of Public Information in the *Arizona Administrative Register (A.A.R.)* and will hold a public meeting/oral proceeding to provide the public with an opportunity to comment on the Master Priority List. The Draft Master Priority List can be viewed on the ADEQ Calendar beginning on April 3, 2020 at <http://azdeq.gov/notices>

Beginning April 3, 2020, the 30-day public review and the written and comment period begins. At the completion of the public review period, the public meeting will be held on May 4, 2020. Following the meeting, the Department will formulate a response to submitted comments and consider modifications to the MPL in response to those comments. If no comments are received, the MPL becomes final on May 4, 2020. If comments are received and changes are made, the revised MPL will be re-published in the *A.A.R.*, along with a summary of comments received and the Department’s response to those comments.

**4. The name and address of agency personnel with whom persons may communicate:**

Name: Linda Taunt, Capacity Development & Technical Assistance Coordinator  
Address: Department of Environmental Quality  
1110 W. Washington St.  
Phoenix, AZ 85007  
Email: [taunt.linda@azdeq.gov](mailto:taunt.linda@azdeq.gov)  
Telephone: (602) 771-4416 (in Arizona: 1-800-234-5677; 771-4416)



**5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**

An oral proceeding will be held on:

Date: Monday, May 4, 2020

Time: 9:30 a.m.

Place: Department of Environmental Quality  
1110 W. Washington St., Room 5100B  
Phoenix, AZ 85007

The Department will accept written comments on the Draft FY21 MPL until close of business on May 4, 2020.



GOVERNOR EXECUTIVE ORDER

Executive Order 2020-02 is being reproduced in each issue of the Administrative Register as a notice to the public regarding state agencies' rulemaking activities.

This order has been reproduced in its entirety as submitted.

EXECUTIVE ORDER 2020-02

Moratorium on Rulemaking to Promote Job Creation and Economic Development; Implementation of Licensing Reform Policies

[M20-01]

WHEREAS, government regulations should be as limited as possible; and

WHEREAS, burdensome regulations inhibit job growth and economic development; and

WHEREAS, protecting the public health, peace and safety of the residents of Arizona is a top priority of state government; and

WHEREAS, in 2015, the State of Arizona implemented a moratorium on all new regulatory rulemaking by State agencies through executive order, and renewed the moratorium in 2016, 2017, 2018 and 2019; and

WHEREAS, the State of Arizona eliminated or improved 637 burdensome regulations in 2019 and a total of 2,289 needless regulations have been eliminated or improved since 2015; and

WHEREAS, estimates show these eliminations saved job creators \$53.9 million in operating costs in 2019 and a total of over \$134.3 million in savings since 2015; and

WHEREAS, in 2019, for every one new necessary rule added to the Administrative Code, five have been repealed or improved; and

WHEREAS, approximately 354,000 private sector jobs have been added to Arizona since January 2015; and

WHEREAS, all government agencies of the State of Arizona should continue to promote customer-service-oriented principles for the people that it serves; and

WHEREAS, each State agency shall continue to conduct a critical and comprehensive review of its administrative rules and take action to reduce the regulatory burden, administrative delay and legal uncertainty associated with government regulation while protecting the health and safety of residents; and

WHEREAS, each State agency should continue to evaluate its administrative rules using any available and reliable data and performance metrics; and

WHEREAS, Article 5, Section 4 of the Arizona Constitution and Title 41, Chapter 1, Article 1 of the Arizona Revised Statutes vests the executive power of the State of Arizona in the Governor.

NOW, THEREFORE, I, Douglas A. Ducey, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona hereby declare the following:

- 1. A State agency subject to this Order shall not conduct any rulemaking, whether informal or formal, without the prior written approval of the Office of the Governor. In seeking approval, a State agency shall address one or more of the following as justifications for the rulemaking:
a. To fulfill an objective related to job creation, economic development or economic expansion in this State.
b. To reduce or ameliorate a regulatory burden while achieving the same regulatory objective.
c. To prevent a significant threat to the public health, peace or safety.
d. To avoid violating a court order or federal law that would result in sanctions by a federal court for failure to conduct the rulemaking action.
e. To comply with a federal statutory or regulatory requirement if such compliance is related to a condition for the receipt of federal funds or participation in any federal program.
f. To comply with a state statutory requirement.
g. To fulfill an obligation related to fees or any other action necessary to implement the State budget that is certified by the Governor's Office of Strategic Planning and Budgeting.
h. To promulgate a rule or other item that is exempt from Title 41, Chapter 6, Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised Statutes.
i. To address matters pertaining to the control, mitigation or eradication of waste, fraud or abuse within an agency or wasteful, fraudulent or abusive activities perpetrated against an agency.
j. To eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.
2. A State agency that submits a rulemaking request pursuant to this Order shall recommend for consideration by the Office of the Governor at least three existing rules to eliminate for every one additional rule requested by the agency.



3. A State agency that submits a rulemaking exemption request pursuant to this Order shall include with their request an analysis of how small businesses may be impacted by any newly proposed rules or rule modifications.
4. A State agency subject to this Order shall not publicize any directives, policy statements, documents or forms on its website unless such are explicitly authorized by the Arizona Revised Statutes or Arizona Administrative Code. Any material that is not specifically authorized must be removed immediately.
5. A State agency that issues occupational or professional licenses shall prominently post on the agency's website landing page all current state policies that ease licensing burdens and the exact steps applicants must complete to receive their license using these policies. State agencies should provide information that applies to all applicants, but have a designated area on such landing page that includes licensing information specifically for military spouses, active duty service members and veterans and all policies that make it easier for these applicant groups to receive their license. Examples of reduced licensing burdens include universal recognition of out-of-state licenses, availability of temporary licenses, fee waivers, exam exemptions and/or allowing an applicant to substitute military education or experience for licensing requirements. A landing page feature may link to an internal agency web page with more information, if necessary. All information must be easy to locate and written in clear and concise language.
6. All state agencies that are required to issue occupational or professional licenses by universal recognition (established by section 32-4302, Arizona Revised Statutes) must track all applications received for this license type. Before any agency denies a professional or occupational license applied for under section 32-4302, Arizona Revised Statutes, the agency shall submit the application and justification for denial to the Office of the Governor for review before any official action is taken by the agency. The Office of the Governor should be notified of any required timeframes, whether in statute or rule, for approval or denial of the license by the agency.
7. For the purposes of this Order, the term "State agencies" includes, without limitation, all executive departments, agencies, offices, and all state boards and commissions, except for: (a) any State agency that is headed by a single elected State official; (b) the Corporation Commission; and (c) any board or commission established by ballot measure during or after the November 1998 general election. Those state agencies, boards and commissions excluded from this Order are strongly encouraged to voluntarily comply with this Order in the context of their own rulemaking processes.
8. This Order does not confer any legal rights upon any persons and shall not be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or to any inaction of a State agency. For the purposes of this Order, "person," "rule" and "rulemaking" have the same meanings prescribed in section 41-1001, Arizona Revised Statutes.

**IN WITNESS THEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

**Douglas A. Ducey**  
**GOVERNOR**

**DONE** at the Capitol in Phoenix on this 13th day of January in the Year Two Thousand and Twenty and of the Independence of the United States of America the Year Two Hundred and Forty-Fourth.

**ATTEST:**

**Katie Hobbs**  
**SECRETARY OF STATE**

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**REGISTER INDEXES**

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The *Register* is published by volume in a calendar year (See “General Information” in the front of each issue for more information).

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Abbreviations for rulemaking activity in this Index include:

**PROPOSED RULEMAKING**

PN = Proposed new Section  
PM = Proposed amended Section  
PR = Proposed repealed Section  
P# = Proposed renumbered Section

**SUPPLEMENTAL PROPOSED RULEMAKING**

SPN = Supplemental proposed new Section  
SPM = Supplemental proposed amended Section  
SPR = Supplemental proposed repealed Section  
SP# = Supplemental proposed renumbered Section

**FINAL RULEMAKING**

FN = Final new Section  
FM = Final amended Section  
FR = Final repealed Section  
F# = Final renumbered Section

**SUMMARY RULEMAKING****PROPOSED SUMMARY**

PSMN = Proposed Summary new Section  
PSMM = Proposed Summary amended Section  
PSMR = Proposed Summary repealed Section  
PSM# = Proposed Summary renumbered Section

**FINAL SUMMARY**

FSMN = Final Summary new Section  
FSMM = Final Summary amended Section  
FSMR = Final Summary repealed Section  
FSM# = Final Summary renumbered Section

**EXPEDITED RULEMAKING****PROPOSED EXPEDITED**

PEN = Proposed Expedited new Section  
PEM = Proposed Expedited amended Section  
PER = Proposed Expedited repealed Section  
PE# = Proposed Expedited renumbered Section

**SUPPLEMENTAL EXPEDITED**

SPEN = Supplemental Proposed Expedited new Section  
SPEM = Supplemental Proposed Expedited amended Section  
SPER = Supplemental Proposed Expedited repealed Section  
SPE# = Supplemental Proposed Expedited renumbered Section

**FINAL EXPEDITED**

FEN = Final Expedited new Section  
FEM = Final Expedited amended Section  
FER = Final Expedited repealed Section  
FE# = Final Expedited renumbered Section

**EXEMPT RULEMAKING****EXEMPT**

XN = Exempt new Section  
XM = Exempt amended Section  
XR = Exempt repealed Section  
X# = Exempt renumbered Section

**EXEMPT PROPOSED**

PXN = Proposed Exempt new Section  
PXM = Proposed Exempt amended Section  
PXR = Proposed Exempt repealed Section  
PX# = Proposed Exempt renumbered Section

**EXEMPT SUPPLEMENTAL PROPOSED**

SPXN = Supplemental Proposed Exempt new Section  
SPXR = Supplemental Proposed Exempt repealed Section  
SPXM = Supplemental Proposed Exempt amended Section  
SPX# = Supplemental Proposed Exempt renumbered Section

**FINAL EXEMPT RULEMAKING**

FXN = Final Exempt new Section  
FXM = Final Exempt amended Section  
FXR = Final Exempt repealed Section  
FX# = Final Exempt renumbered Section

**EMERGENCY RULEMAKING**

EN = Emergency new Section  
EM = Emergency amended Section  
ER = Emergency repealed Section  
E# = Emergency renumbered Section  
EEXP = Emergency expired

**RECODIFICATION OF RULES**

RC = Recodified

**REJECTION OF RULES**

RJ = Rejected by the Attorney General

**TERMINATION OF RULES**

TN = Terminated proposed new Sections  
TM = Terminated proposed amended Section  
TR = Terminated proposed repealed Section  
T# = Terminated proposed renumbered Section

**RULE EXPIRATIONS**

EXP = Rules have expired

*See also “emergency expired” under emergency rulemaking*

**CORRECTIONS**

C = Corrections to Published Rules

**2020 Arizona Administrative Register  
Volume 26 Page Guide**

Issue 1, Jan. 3, 2020.....1-44	Issue 2, Jan. 10, 2020.....45-96	Issue 3, Jan. 17, 2020.....97-124
Issue 4, Jan. 24, 2020.....125-182	Issue 5, Jan. 31, 2020.....183-218	Issue 6, Feb. 7, 2020.....219-258
Issue 7, Feb. 14, 2020.....259-304	Issue 8, Feb. 21, 2020.....305-330	Issue 9, Feb. 28, 2020.....331-366
Issue 10, March 6, 2020.....367-396	Issue 11, March 13, 2020.....397-468	Issue 12, March 20, 2020.....469-524
Issue 13, March 27, 2020.....525-584		

**RULEMAKING ACTIVITY INDEX**

Rulemakings are listed in the Index by Chapter, Section number, rulemaking activity abbreviation and volume page number. Use the page guide above to determine the *Register* issue number to review the rule. Headings for the Subchapters, Articles, Parts, and Sections are not indexed.

**THIS INDEX INCLUDES RULEMAKING ACTIVITY THROUGH ISSUE 13 OF VOLUME 26.**

**Agriculture, Department of - Pest Management Division**

R3-8-103. PEM-379

**Accountancy, Board of**

R4-1-101. FM-339  
 R4-1-104. FM-339  
 R4-1-115.03. FM-339  
 R4-1-226.01. FM-339  
 R4-1-228. FR-339;  
 FN-339  
 R4-1-229. FM-339  
 R4-1-341. FM-339  
 R4-1-344. FM-339  
 R4-1-345. FM-339  
 R4-1-346. FM-339  
 R4-1-453. FM-339  
 R4-1-454. FM-339  
 R4-1-455. FM-339  
 R4-1-455.01. FM-339  
 R4-1-456. FM-339

**Arizona Health Care Cost Containment System - Grievance System**

R9-34-101. FM-548

**Child Safety, Department of - Permanency and Support Services**

R21-5-201. FM-241  
 R21-5-205. FM-241

**Clean Elections Commission, Citizens**

R2-20-104. TM-114  
 R2-20-113. FM-335  
 R2-20-209. FM-111; FM-542  
 R2-20-701. PM-101  
 R2-20-702. FM-309  
 R2-20-702.01. PM-102  
 R2-20-703.01. PM-104  
 R2-20-704. FM-337

**Corporation Commission - Fixed Utilities**

R14-2-2601. FN-473  
 R14-2-2602. FN-473  
 R14-2-2603. FN-473  
 R14-2-2604. FN-473  
 R14-2-2605. FN-473  
 R14-2-2606. FN-473  
 R14-2-2607. FN-473  
 R14-2-2608. FN-473  
 R14-2-2609. FN-473  
 R14-2-2610. FN-473  
 R14-2-2611. FN-473  
 R14-2-2612. FN-473  
 R14-2-2613. FN-473  
 R14-2-2614. FN-473  
 R14-2-2615. FN-473  
 R14-2-2616. FN-473  
 R14-2-2617. FN-473  
 R14-2-2618. FN-473  
 R14-2-2619. FN-473  
 R14-2-2620. FN-473  
 R14-2-2621. FN-473  
 R14-2-2622. FN-473  
 R14-2-2623. FN-473  
 R14-2-2624. FN-473  
 R14-2-2625. FN-473  
 R14-2-2626. FN-473  
 R14-2-2627. FN-473  
 R14-2-2628. FN-473

**Corporation Commission - Transportation**

R14-5-202. PM-11  
 R14-5-204. PM-11

**Dispensing Opticians, Board of**

R4-20-120. FM-202

**Economic Security, Department of - Child Support Enforcement**

R6-7-103. FM-15

**Economic Security, Department of - Developmental Disabilities**

R6-6-401. P#-5; PN-5

R6-6-402. P#-5; PM-5  
 R6-6-403. PR-5; P#-5  
 R6-6-404. PM-5  
 R6-6-405. P#-5; PM-5

**Economic Security, Department of - Food Stamps Program**

R6-14-301. FN-263  
 R6-14-302. FN-263  
 R6-14-303. FN-263  
 R6-14-304. FN-263  
 R6-14-305. FN-263  
 R6-14-306. FN-263  
 R6-14-307. FN-263  
 R6-14-308. FN-263  
 R6-14-309. FN-263  
 R6-14-310. FN-263  
 R6-14-311. FN-263  
 R6-14-401. FN-263  
 R6-14-402. FN-263  
 R6-14-403. FN-263  
 R6-14-404. FN-263  
 R6-14-405. FN-263  
 R6-14-406. FN-263  
 R6-14-407. FN-263  
 R6-14-408. FN-263  
 R6-14-409. FN-263  
 R6-14-410. FN-263  
 R6-14-411. FN-263  
 R6-14-412. FN-263  
 R6-14-413. FN-263  
 R6-14-414. FN-263  
 R6-14-415. FN-263  
 R6-14-416. FN-263  
 R6-14-417. FN-263  
 R6-14-501. FN-263  
 R6-14-502. FN-263  
 R6-14-503. FN-263  
 R6-14-504. FN-263  
 R6-14-505. FN-263  
 R6-14-506. FN-263  
 R6-14-507. FN-263

**Education, State Board of**



R12-5-2105.	EXP-290	R4-23-407.	FM-223;	R2-12-1201.	F#-106; FN-106
R12-5-2106.	EXP-290		FM-544	R2-12-1202.	F#-106; FM-106
<b>Manufactured Housing, Board of</b>					
R4-34-101.	PM-529	R4-23-408.	FM-223	R2-12-1203.	F#-106
R4-34-102.	PM-529	R4-23-411.	FM-223	R2-12-1204.	F#-106; FM-106
R4-34-203.	PM-529	R4-23-607.	FM-223	R2-12-1205.	F#-106; FM-106
R4-34-204.	PM-529	R4-23-801.	FR-223	R2-12-1206.	F#-106; FM-106
R4-34-502.	PM-529	R4-23-1103.	FM-223	R2-12-1207.	F#-106; FM-106
R4-34-504.	PM-529	R4-23-1106.	FM-223	R2-12-1208.	FR-106; F#-106
R4-34-603.	PM-529	<b>Psychologist Examiners, Board of</b>			
R4-34-606.	PM-529	R4-26-203.	PM-187	R2-12-1209.	FR-106
R4-34-607.	PM-529	R4-26-203.01.	PM-187	R2-12-1301.	FN-537
R4-34-701.	PM-529	R4-26-205.	PM-187	R2-12-1302.	FN-537
R4-34-702.	PM-529	R4-26-207.	PM-187	R2-12-1303.	FN-537
R4-34-703.	PM-529	Table 1.	PM-187	R2-12-1304.	FN-537
R4-34-704.	PM-529	R4-26-401.	PM-187	R2-12-1305.	FN-537
R4-34-705.	PM-529	R4-26-403.	PM-187	R2-12-1306.	FN-537
R4-34-706.	PM-529	R4-26-404.1.	PM-187	R2-12-1307.	FN-537
R4-34-801.	PM-529	R4-26-404.2.	PM-187	R2-12-1308.	FN-537
R4-34-802.	PM-529	R4-26-406.	PM-187	<b>Transportation, Department of - Highways</b>	
R4-34-805.	PM-529	R4-26-407.	PR-187	R17-3-801.	EXP-382
<b>Pharmacy, Board of</b>					
R4-23-110.	FM-223	R4-26-408.	PM-187	R17-3-802.	EXP-382
R4-23-204.	FM-223	R4-26-415.	PM-187	R17-3-803.	EXP-382
R4-23-205.	FM-223	<b>Retirement System Board, State</b>			
<b>Secretary of State, Office of the</b>					
		R2-8-122.	FM-371	R17-3-804.	EXP-382
				R17-3-805.	EXP-382
				R17-3-806.	EXP-382
				R17-3-808.	EXP-382

**OTHER NOTICES AND PUBLIC RECORDS INDEX**

Other legal notices required to be published under the Administrative Procedure Act, such as Rulemaking Docket Openings, are included in this Index by volume page number. Notices of Agency Ombudsman, Substantive Policy Statements, Proposed Delegation Agreements, and other applicable public records as required by law are also listed in this Index by volume page number.

**THIS INDEX INCLUDES OTHER NOTICE ACTIVITY THROUGH ISSUE 13 OF VOLUME 26.**

<b>Agency Ombudsman, Notices of</b>	Health Services, Department of - Administration; 9 A.A.C. 1; pp. 206-207	Public Safety, Department of - School Buses; 13 A.A.C. 13; p. 569
Child Safety, Department of; p. 384	Health Services, Department of - Communicable Diseases and Infestations; 9 A.A.C. 6; p. 291	<b>Governor's Office</b>
Chiropractic Examiners, Board of; p. 173	Health Services, Department of - Food, Recreational, and Institutional Sanitation; 9 A.A.C. 8; p. 356	<b>Executive Order 2019-01:</b> pp. 23-24
Dental Examiners, Board of; p. 384	Health Services, Department of - Health Care Institution Facility Data; 9 A.A.C. 11; p. 569	<b>Executive Order 2020-02:</b> pp. 174-175
First Things First/Early Childhood Development and Health Board; p. 456	Health Services, Department of - Health Care Institutions: Licensing; 9 A.A.C. 10; p. 317	<b>Governor's Regulatory Review Council</b>
Osteopathic Examiners in Medicine and Surgery, Board of; p. 21	Health Services, Department of - Radiation Control; 9 A.A.C. 7; pp. 355-356	Notices of Action Taken at Monthly Meetings: pp. 217, 257-258, 302-303, 581-582
Public Safety, Department of; p. 21	Manufactured Housing, Board of; 4 A.A.C. 34; p. 568	<b>Public Information, Notices of</b>
<b>Docket Opening, Notices of Rulemaking</b>	Nursing Care Institution Administrators and Assisted Living Facility Managers, Board of Examiners for; 4 A.A.C. 33; p. 17	Health Services, Department of; pp. 246-247
Agriculture, Department of - Pest Management Division; 3 A.A.C. 8; p. 383	Psychologist Examiners, Board of; 4 A.A.C. 26; pp. 205-206	<b>Substantive Policy Statement, Notices of</b>
Clean Elections Commission, Citizens; 2 A.A.C. 20; pp. 115-116	Public Safety, Department of - Tow Trucks; 13 A.A.C. 3; p. 18	Contractors, Registrar of; p. 319
Corporation Commission - Transportation; 14 A.A.C. 5; p. 19		Finance Authority, Water Infrastructure; pp. 319-321
Economic Security, Department of - Developmental Disabilities; 6 A.A.C. 6; p. 17		Land Department, State; pp. 512-513
Environmental Quality, Department of - Hazardous Waste Management; 18 A.A.C. 8; p. 318		State Lottery, Arizona; p. 117



### RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		February		March		April		May		June	
Date Filed	Effective Date										
1/1	3/1	2/1	4/1	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/2	2/2	4/2	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/3	2/3	4/3	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/4	2/4	4/4	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
1/5	3/5	2/5	4/5	3/5	5/4	4/5	6/4	5/5	7/4	6/5	8/4
1/6	3/6	2/6	4/6	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
1/7	3/7	2/7	4/7	3/7	5/6	4/7	6/6	5/7	7/6	6/7	8/6
1/8	3/8	2/8	4/8	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/9	2/9	4/9	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/10	2/10	4/10	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/11	2/11	4/11	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/12	2/12	4/12	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/13	2/13	4/13	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/14	2/14	4/14	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/15	2/15	4/15	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/16	2/16	4/16	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/17	2/17	4/17	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/18	2/18	4/18	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/19	2/19	4/19	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/20	2/20	4/20	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/21	2/21	4/21	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/22	2/22	4/22	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/23	2/23	4/23	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
1/24	3/24	2/24	4/24	3/24	5/23	4/24	6/23	5/24	7/23	6/24	8/23
1/25	3/25	2/25	4/25	3/25	5/24	4/25	6/24	5/25	7/24	6/25	8/24
1/26	3/26	2/26	4/26	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
1/27	3/27	2/27	4/27	3/27	5/26	4/27	6/26	5/27	7/26	6/27	8/26
1/28	3/28	2/28	4/28	3/28	5/27	4/28	6/27	5/28	7/27	6/28	8/27
1/29	3/29	2/29	4/29	3/29	5/28	4/29	6/28	5/29	7/28	6/29	8/28
1/30	3/30			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	3/31			3/31	5/30			5/31	7/30		



July		August		September		October		November		December	
Date Filed	Effective Date										
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30/21
7/2	8/31	8/2	10/1	9/2	11/1	10/2	12/1	11/2	1/1/21	12/2	1/31/21
7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2/21	12/3	2/1/21
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3/21	12/4	2/2/21
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4/21	12/5	2/3/21
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5/21	12/6	2/4/21
7/7	9/5	8/7	10/6	9/7	11/6	10/7	12/6	11/7	1/6/21	12/7	2/5/21
7/8	9/6	8/8	10/7	9/8	11/7	10/8	12/7	11/8	1/7/21	12/8	2/6/21
7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8/21	12/9	2/7/21
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9/21	12/10	2/8/21
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10/21	12/11	2/9/21
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11/21	12/12	2/10/21
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12/21	12/13	2/11/21
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13/21	12/14	2/12/21
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14/21	12/15	2/13/21
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15/21	12/16	2/14/21
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16/21	12/17	2/15/21
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17/21	12/18	2/16/21
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18/21	12/19	2/17/21
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19/21	12/20	2/18/21
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20/21	12/21	2/19/21
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21/21	12/22	2/20/21
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22/21	12/23	2/21/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23/21	12/24	2/22/21
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24/21	12/25	2/23/21
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25/21	12/26	2/24/21
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26/21	12/27	2/25/21
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27/21	12/28	2/26/21
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28/21	12/29	2/27/21
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29/21	12/30	2/28/21
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1/21



**REGISTER PUBLISHING DEADLINES**

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

<b>Deadline Date (paper only) Friday, 5:00 p.m.</b>	<b>Register Publication Date</b>	<b>Oral Proceeding may be scheduled on or after</b>
February 7, 2020	February 28, 2020	March 30, 2020
February 14, 2020	March 6, 2020	April 6, 2020
February 21, 2020	March 13, 2020	April 13, 2020
February 28, 2020	March 20, 2020	April 20, 2020
March 6, 2020	March 27, 2020	April 27, 2020
March 13, 2020	April 3, 2020	May 4, 2020
March 20, 2020	April 10, 2020	May 11, 2020
March 27, 2020	April 17, 2020	May 18, 2020
April 3, 2020	April 24, 2020	May 26, 2020
April 10, 2020	May 1, 2020	June 2, 2020
April 17, 2020	May 8, 2020	June 8, 2020
April 24, 2020	May 15, 2020	June 15, 2020
May 1, 2020	May 22, 2020	June 22, 2020
May 8, 2020	May 29, 2020	June 29, 2020
May 15, 2020	June 5, 2020	July 6, 2020
May 22, 2020	June 12, 2020	July 13, 2020
May 29, 2020	June 19, 2020	July 20, 2020
June 5, 2020	June 26, 2020	July 27, 2020
June 12, 2020	July 3, 2020	August 3, 2020
June 19, 2020	July 10, 2020	August 10, 2020
June 26, 2020	July 17, 2020	August 17, 2020
July 3, 2020	July 24, 2020	August 24, 2020
July 10, 2020	July 31, 2020	August 31, 2020
July 17, 2020	August 7, 2020	September 8, 2020
July 24, 2020	August 14, 2020	September 14, 2020
July 31, 2020	August 21, 2020	September 21, 2020
August 7, 2020	August 28, 2020	September 28, 2020
August 14, 2020	September 4, 2020	October 5, 2020
August 21, 2020	September 11, 2020	October 13, 2020
August 28, 2020	September 18, 2020	October 19, 2020



## GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year Review Reports and any adopted rule submitted to the Governor’s Regulatory Review Council. Council meetings and *Register* deadlines do not correlate. We publish these deadlines under A.R.S. § 41-1013(B)(15).

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council’s office is located at 100 N. 15th Ave., Suite 305, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit <http://grrc.az.gov>.

### GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES FOR 2019/2020 (MEETING DATES ARE SUBJECT TO CHANGE)

[M19-118]

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
<i>Tuesday</i> November 19, 2019	<i>Tuesday</i> December 24, 2019	<i>Tuesday</i> January 7, 2020	<i>Tuesday</i> January 14, 2020
<i>Tuesday</i> December 24, 2019	<i>Tuesday</i> January 21, 2020	<i>Tuesday</i> January 28, 2020	<i>Tuesday</i> February 4, 2020
<i>Tuesday</i> January 21, 2020	<i>Tuesday</i> February 18, 2020	<i>Tuesday</i> February 25, 2020	<i>Tuesday</i> March 3, 2020
<i>Tuesday</i> February 18, 2020	<i>Tuesday</i> March 24, 2020	<i>Tuesday</i> March 31, 2020	<i>Tuesday</i> April 7, 2020
<i>Tuesday</i> March 24, 2020	<i>Tuesday</i> April 21, 2020	<i>Tuesday</i> April 28, 2020	<i>Tuesday</i> May 5, 2020
<i>Tuesday</i> April 21, 2020	<i>Tuesday</i> May 19, 2020	<b>Wednesday</b> May 27, 2020	<i>Tuesday</i> June 2, 2020
<i>Tuesday</i> May 19, 2020	<i>Tuesday</i> June 23, 2020	<i>Tuesday</i> June 30, 2020	<i>Tuesday</i> July 7, 2020
<i>Tuesday</i> June 23, 2020	<i>Tuesday</i> July 21, 2020	<i>Tuesday</i> July 28, 2020	<i>Tuesday</i> August 4, 2020
<i>Tuesday</i> July 21, 2020	<i>Tuesday</i> August 18, 2020	<i>Tuesday</i> August 25, 2020	<i>Tuesday</i> September 1, 2020
<i>Tuesday</i> August 18, 2020	<i>Tuesday</i> September 22, 2020	<i>Tuesday</i> September 29, 2020	<i>Tuesday</i> October 6, 2020
<i>Tuesday</i> September 22, 2020	<i>Tuesday</i> October 20, 2020	<i>Tuesday</i> October 27, 2020	<i>Tuesday</i> November 3, 2020
<i>Tuesday</i> October 20, 2020	<i>Tuesday</i> November 17, 2020	<i>Tuesday</i> November 24, 2020	<i>Tuesday</i> December 1, 2020
<i>Tuesday</i> November 17, 2020	<i>Tuesday</i> December 22, 2020	<i>Tuesday</i> December 29, 2020	<i>Tuesday</i> January 5, 2021
<i>Tuesday</i> December 29, 2020	<i>Tuesday</i> January 19, 2021	<i>Tuesday</i> January 26, 2021	<i>Tuesday</i> February 2, 2021

\* Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.