

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

PREAMBLE

| <u>1.</u> | <u>Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|------------------|--|---------------------------------|
| | Article 8 | New Article |
| | R18-15-801 | New Section |
| | R18-15-802 | New Section |
| | R18-15-803 | New Section |
| | R18-15-804 | New Section |
| | R18-15-805 | New Section |
| | R18-15-806 | New Section |
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| | R18-15-810 | New Section |
| | R18-15-811 | New Section |
| | R18-15-812 | New Section |
| | R18-15-813 | New Section |
| | R18-15-814 | New Section |
| | R18-15-815 | New Section |
| | R18-15-816 | New Section |
| | R18-15-817 | New Section |

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| R18-15-818 | New Section |
| R18-15-819 | New Section |
| R18-15-820 | New Section |
| R18-15-821 | New Section |
| R18-15-822 | New Section |
| R18-15-823 | New Section |
| R18-15-824 | New Section |
| R18-15-825 | New Section |
| R18-15-826 | New Section |

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

Authorizing statute: A.R.S. § 49-1203(E)

Implementing statutes: A.R.S. §§ 49-1211 through 49-1213; 49-1301 through 49-1313

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:

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

Name: Joe Citelli, General Counsel

Address: Water Infrastructure Finance Authority of Arizona
100 N. 7th Avenue, Suite 130
Phoenix, Arizona 85007

Telephone: (602) 364-1314

Email: JCitelli@azwifa.gov

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 An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The purpose of this Water Infrastructure Finance Authority of Arizona (“WIFA”) rulemaking is to add procurement rules governing the Long-Term Water Augmentation Fund (“LTWAF”). Additionally, this rulemaking effort is required by recent changes to WIFA’s governing statutes. *See* A.R.S. § 49-1203(E) (“...In coordination with the department of administration, the authority shall establish procurement procedures by rule to administer the long-term water augmentation fund”).

On September 24, 2022, Arizona Senate Bill 1740 (Fifty-fifth Legislature, Second Regular Session (2022)) became effective, establishing WIFA as an independent state agency and transferring governance of WIFA from the Arizona Finance Authority Board of Directors to the WIFA Board of Directors. Among other changes, SB1740 established the LTWAF to finance water supply development opportunities that increase water supplies for Arizona.

Notably, SB1740 exempted WIFA from the Arizona Procurement Code and required WIFA to establish procurement procedures by rule to administer the LTWAF. As part of its five-year review report approved by the Governor’s Regulatory Review Council on November 7, 2023, WIFA proposed submitting rules to govern the LTWAF during FY2024 to comply with the new statutory requirements. After receiving an exception according to A.R.S. § 41-1039(A), WIFA now submits those rules through expedited rulemaking. Expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(7) because this rulemaking will implement without material change, a course of action that was proposed in WIFA’s five-year review report.

The proposed rules will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Prior to submitting the proposed rules WIFA consulted with the Arizona Department of Administration’s State Procurement Office and General Services Division. WIFA believes the rules are effective and reduce burdens when compared to the Arizona Procurement Code. For example, the proposed rules streamline the procurement process with an emphasis on simplicity, understandability, and accessibility. Under A.R.S. § 49-1212, WIFA may utilize a variety of procurement methods to procure services for the development, design, acquisition, construction, improvement, or equipping of water-related facilities. The Arizona Procurement Code establishes a separate set of rules and procedures for each of these procurement methods. However, WIFA’s proposed rules simplify the LTWAF procurement process by establishing a single set of rules to govern the various types of procurements authorized under A.R.S. § 49-1212. Furthermore, by modeling the procurement rules after existing rules in the

Arizona Procurement Code, the proposed rulemaking promotes understandability and utilizes definitions and processes familiar to those who conduct procurements with the State of Arizona.

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 Authority did not review or rely on any study for 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:

Under A.R.S. § 41-1055(D)(2), the Authority is not required to provide an economic, small business, and consumer impact statement.

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

Name: Joe Citelli, General Counsel
Address: Water Infrastructure Finance Authority of Arizona
100 N. 7th Avenue, Suite 130
Phoenix, Arizona 85007
Telephone: (602) 364-1314
Email: JCitelli@azwifa.gov

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

Written or emailed comments related to this proposed rulemaking may be submitted at any time during the public comment period to the person referenced in Item 5 above. Close of comment period will occur on the date of proceeding (listed below) at 4:00 p.m.

Additionally, the Authority has scheduled the following oral proceeding to receive oral comments on the proposed rules in accordance with A.R.S. § 41-1023; the date, time, location, and nature of the proceeding are listed below:

Date of Proceeding: January 16, 2024, at 1:00 p.m.

Time: 1:00 p.m. MST.

Location: Virtual (Via Microsoft Teams)

<https://azcommerce.zoom.us/j/96846726275>

Webinar ID: 968 4672 6275

Telephone: +1 253 215 8782

Close of record: January 16, 2024, at 4:00 p.m.

Nature: Oral proceeding on the proposed rules, with opportunity for formal comments on the record.

The Authority will take reasonable measures to provide access to Authority services to individuals with limited ability to speak, write, or understand English and to those with disabilities. Requests for language interpretation, ASL interpretation, CART captioning services, or disability accommodations must be made at least 48 hours in advance by contacting the individual referenced in Item 4 above.

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:

There are no other matters prescribed by statutes applicable to the Authority or this specific rulemaking.

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 rule does not require the use of a permit. Therefore, a general permit is not applicable.

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

There are no federal rules applicable to the subject of the rule.

- 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 business competitiveness analysis was submitted to the Authority.

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

Not applicable.

- 13.** **The full text of the rules follows:**

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

ARTICLE 8. LONG-TERM WATER AUGMENTATION FUND PROCUREMENT

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ARTICLE 8. LONG-TERM WATER AUGMENTATION FUND PROCUREMENT

R18-15-801. Definitions

The terms of this Article, unless otherwise specified, have the following meanings:

“Award” means a determination by the Authority that it is entering into a Contract with one or more Offerors.

“Board” has the same meaning as prescribed in A.R.S. § 49-1201(2).

"Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.

“Competitive Range” is a range of scores used by the Authority to determine whether an Offer will be considered for further evaluation after an initial susceptibility determination and the scoring of Offers received in the Solicitation process. The Authority may conduct multiple reviews and narrow or expand the Competitive Range throughout the procurement process. Those Offers that have no reasonable chance for Award when compared on a relative basis with more highly ranked Offers will not be in the Competitive Range. Offers to be considered within the Competitive Range must, at a minimum, demonstrate the following:

Affirmative compliance with mandatory requirements designated in the Solicitation.

An ability to deliver goods or services on terms advantageous to the Authority sufficient to be entitled to continue in the competition.

That the Offer as submitted is technically acceptable under the criteria set forth in the Solicitation.

“Construction” has the same meaning as prescribed in A.R.S. § 41-2503(4).

"Contract" means all types of agreements, regardless of what they may be called, for any Procurement related to a Water-Related Facilities project or Water Supply Development project.

"Contractor" means any Person who has a Contract with the Authority.

“Data” means documented information, regardless of form or characteristic.

“Day” means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the Solicitation or Contract.

“Director” means the Director of the Water Infrastructure Finance Authority of Arizona.

“Interested Party” means an Offeror or prospective Offeror whose economic interest is affected substantially and directly by issuance of a Solicitation, an Award or loss of an Award. Whether an Offeror or prospective Offeror has an economic interest depends upon the circumstances of each case.

“May” means something is permissive.

“Negotiation” means an exchange or series of exchanges between the Authority and an Offeror or Contractor that allows the Authority or the Offeror or Contractor to revise an Offer or Contract.

“Offer” means a response to a Solicitation.

“Offeror” means a Person who responds to a Solicitation.

“Person” means any corporation, Business, individual, union, committee, club, other organization, or group of individuals.

“Procurement”:

Means buying, purchasing, renting, leasing or otherwise acquiring any materials, property, services, or construction, in connection with a Water-Related Facilities project or a Water Supply Development project.

Includes all functions that pertain to obtaining any materials, services, or construction, including description of requirements, selection and Solicitation of sources, preparation and Award of Contract, and all phases of Contract administration.

Does not include providing financial assistance in the form of loans or grants.

“Procurement File” means the official records file of the Authority. The Procurement File shall include (electronic or paper) the following:

List of notified vendors;

Final Solicitation;

Solicitation amendments;

Bids and Offers;

Offer revisions;

Best and final Offers;

Negotiations;

Clarifications;

Final evaluation reports; and

Additional information, if requested by the Authority.

“Shall” means something is mandatory.

“Solicitation” means any Solicitation method authorized under A.R.S. § 49-1212, issued by the Authority to invite a Person to submit an Offer.

"Subcontractor" means a Person who contracts to perform work or render service to a Contractor or to another Subcontractor as a part of a Contract with the Authority.

“Trade Secret” means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

“Water-Related Facilities” has the same meaning as prescribed in A.R.S. § 49-1201(21).

“Water Supply Development” has the same meaning as prescribed in A.R.S. § 49-1201(22).

R18-15-802. Solicitations

- A.** A Procurement for a Water-Related Facilities project or a Water Supply Development project shall commence by issuing a Solicitation. The Solicitation shall be developed in consultation with the Arizona Department of Administration.
- B.** The Authority shall issue a Solicitation at least fourteen Days before the Offer due date and time, unless the Authority determines a shorter time is necessary for a particular Procurement. The Solicitation shall be posted at a designated site on a worldwide public network of interconnected computers and may also be distributed in any other manner deemed appropriate by the Authority. If a shorter time is necessary, the Authority shall document the specific reasons in the Procurement File.
- C.** Offers shall be opened on the date and time designated in the Solicitation. The name of each Offeror shall be recorded in accordance with procedures adopted by the Authority. All other information contained in the Offers shall be confidential to avoid disclosure of contents prejudicial to competing Offerors during the process of Negotiation. The Authority has determined that the only way to ensure best value is through a competitive Procurement process in which Offers are kept confidential during the Procurement process as described herein. This confidential Negotiation process allows the Authority to get the best possible value in each of its separate Negotiations with Offerors. The Offers shall be open for public inspection after Contract Award. To the extent the Offeror designates, and the

Authority concurs, Trade Secrets or other proprietary Data contained in the Offer documents shall remain confidential in accordance with procedures adopted by the Authority.

D. The Solicitation shall state the relative importance of price and other evaluation factors. Specific numerical weighting is not required.

E. The Authority may require the submission of security to guarantee faithful bid and Contract performance. The amount and type of security required for each Contract shall be in the sole discretion of the Authority. The requirement for security shall be included in the Solicitation.

F. The Authority shall include the following in the Solicitation:

1. Instructions to Offerors, including:

- a.** Instructions and information to Offerors concerning the Offer submission requirements, Offer due date and time, the location where Offers will be received, and the Offer acceptance period;
- b.** The deadline date for requesting a substitution or exception to the Solicitation;
- c.** The manner by which the Offeror is required to acknowledge amendments;
- d.** The minimum information required in the Offer;
- e.** The specific requirements for designating Trade Secrets and other proprietary information as confidential;
- f.** Any specific responsibility or susceptibility criteria;
- g.** Whether the Offeror is required to submit samples, descriptive literature, and technical Data with the Offer;
- h.** Evaluation factors and the relative order of importance;
- i.** A statement of where documents incorporated by reference are available for inspection and copying;
- j.** A statement that the Authority may cancel the Solicitation or reject an Offer in whole or in part;
- k.** Certification by the Offeror that submission of the Offer did not include collusion or other anticompetitive practices;
- l.** 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;
- m.** Any Offer security required;

- n. The means required for submission of Offer. The Solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - o. Any cost or pricing Data required;
 - p. The type of Contract to be used;
 - q. A statement that Negotiations may be conducted with Offerors reasonably susceptible of being selected for Award and that fall within the Competitive Range; and
 - r. Any other Offer requirements specific to the Solicitation.
2. Specifications, including:
- a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equal specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The Solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
 - c. Any other specification requirements specific to the Solicitation.
3. Terms and Conditions, including:
- a. Whether the Contract is to include an extension option; and
 - b. Any other Contract terms and conditions.

R18-15-803. Solicitation Amendment

- A.** The Authority may issue a Solicitation amendment to do any or all of the following:
 - 1. Make changes in the Solicitation;
 - 2. Correct defects or ambiguities;
 - 3. Provide additional information or instructions; or
 - 4. Extend the Offer due date and time if the Authority determines that an extension is in the best interest of the Authority.
- B.** If a Solicitation is changed by a written Solicitation amendment, the amendment shall be distributed in the same manner as the Solicitation.
- C.** It is the responsibility of the Offeror to obtain any Solicitation amendments. An Offeror shall acknowledge receipt of an amendment in a manner specified in the Solicitation amendment on or before the Offer due date and time.

R18-15-804. Cancellation of Solicitation Before Offer Due Date and Time

- A.** A Solicitation may be cancelled, or any or all Offers may be rejected in whole or in part, as may be specified in the Solicitation if it is in the best interests of the Authority. The reasons for the cancellation or rejection shall be made part of the Procurement file.
- B.** The Authority shall notify Offerors who submitted an Offer.
- C.** The Authority shall not open Offers after cancellation. The Authority may discard the Offer after thirty Days from notice of Solicitation cancellation unless the Offeror requests the Offer be returned.

R18-15-805. Pre-Offer Conferences

- A.** The Authority may conduct one or more pre-Offer conferences or site visits. Pre-Offer conferences must be open to the public. If a pre-Offer conference is conducted, it shall be not less than seven Days before the Offer due date and time, unless the Authority makes a written determination that the specific needs of the Procurement justify a shorter time. Statements made during a pre-Offer conference are not amendments to the Solicitation.
- B.** Notice of a pre-Offer conference shall be posted at a designated site on a worldwide public network of interconnected computers, no less than seven Days prior to the pre-Offer conference, as part of the Solicitation materials.

R18-15-806. Modification or Withdrawal of Offer Before Offer Due Date and Time

- A.** An Offeror may modify or withdraw their Offer at any time, in writing, before the Offer due date and time.
- B.** The Authority shall place the document submitted in the Procurement File as a record of the modification or withdrawal.

R18-15-807. Confidential Information

- A.** If a Person wants to assert that a Person's Offer, specification, or protest contains a Trade Secret or other proprietary information, a Person shall include with the submission a statement supporting this assertion. A Person shall clearly designate any Trade Secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B.** Until a final determination is made under subsection (C), the Authority shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by the Authority to have a legitimate state interest.

- C.** Upon receipt of a submission, the Authority shall make one of the following written determinations:
1. The designated information is confidential, and the Authority shall not disclose the information except to those individuals deemed by the Authority to have a legitimate state interest;
 2. The designated information is not confidential; or
 3. Additional information is required before a final confidentiality determination can be made.
- D.** If the Authority determines that information submitted is not confidential, a Person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the Authority.
- E.** The Authority may release information designated as confidential under subsection (A) if:
1. A request for review is not received by the Authority within the time period specified in the notice; or
 2. The Authority, after review, makes a written determination that the designated information is not confidential.

R18-15-808. Receipt, Opening, and Recording of Offers

- A.** The Authority shall maintain a record of Offers received for each Solicitation and shall record the time and date when an Offer is received. The Authority shall store each unopened Offer in a secure place until the Offer due date and time.
- B.** The Authority may open an Offer to identify the Offeror. If this occurs, the Authority shall record the reason for opening the Offer, the date and time the Offer was opened, and the Solicitation number. The Authority shall secure the Offer and retain it for opening.
- C.** The Authority shall open Offers at or after the Offer due date and time. The Authority shall record the name of each Offeror and any other relevant information as determined by the Authority. The Authority shall make the record of Offers available for public viewing.
- D.** Except for the information identified in subsection (C) and the information deemed confidential under R18-15-807, the Authority shall ensure that information contained in the Offer remains confidential until Contract Award and is shown only to those Persons assisting in the evaluation process.

R18-15-809. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

- A.** If an Offer, modification, or withdrawal is not received by the Offer due date and time, at the location designated in the Solicitation, the Authority shall determine the Offer, modification, or withdrawal as late. This rule does not apply to revision or withdrawal of Offers as described in R18-15-816.
- B.** The Authority shall reject a late Offer, modification, or withdrawal unless:

1. The document is received before Contract Award at the location designated in the Solicitation; and
 2. The document would have been received by the Offer due date and time, but for the action or inaction of personnel directly serving the Authority.
- C.** Upon receiving a late Offer, modification, or withdrawal, the Authority shall:
1. If the document is hand delivered, refuse to accept the delivery; or
 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the Offeror. The Authority may discard the document within thirty Days after the date on the notice unless the Offeror requests the document be returned.
- D.** The Authority shall document a refusal under (C)(1) and place the document or a copy of the notice required in (C)(2) in the Procurement File.

R18-15-810. Only One Offer Received

If only one Offer is received in response to a Solicitation, the Authority shall review the Offer and either:

1. Award the Contract to the Offeror and prepare a written determination that:
 - a. The price submitted is fair and reasonable; and
 - b. The Offeror is responsive; and
 - c. The Offeror is responsible; or
2. Reject the Offer and:
 - a. Resolicit for new Offers; or
 - b. Cancel the Procurement.

R18-15-811. Extension of Offer Acceptance Period

- A.** To extend the Offer acceptance period, the Authority shall notify Offerors in writing of an extension and request written concurrence from all Offerors.
- B.** To be eligible for a Contract Award, an Offeror shall submit written concurrence to the extension. The Authority shall not consider the Offer from an Offeror who fails to respond to the notice of extension.

R18-15-812. Cancellation of Solicitation After Offer Opening and Before Award

- A.** Based on the best interest of the Authority, the Authority may cancel a Solicitation after Offer due date and time. The Authority shall prepare a written justification for cancellation and place it in the Procurement File.
- B.** The Authority shall notify Offerors of the cancellation in writing.

- C. The Authority shall retain Offers received under the canceled Solicitation in the Procurement File. If the Authority intends to issue another Solicitation within six months after cancellation of the Procurement, the Authority may withhold the Offers from public inspection. After Award of a Contract under the subsequent Solicitation, the Authority shall make Offers submitted in response to the cancelled Solicitation open for public inspection except for information determined to be confidential.
- D. In the event of cancellation, the Authority shall promptly return any Offer security provided by an Offeror.

R18-15-813. Clarification of Offers

- A. The purpose for clarifications is to provide for a greater mutual understanding of the Offer. Clarifications are not Negotiations and material changes to the Solicitation or Offer shall not be made by clarification.
- B. The Authority may request clarifications from Offerors at any time after receipt of Offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the Offeror shall confirm the request in writing. A request for clarification shall not be considered a determination that the Offeror is susceptible for Award.
- C. The Authority may request an interview or demonstration with a reasonably susceptible Offeror for the purpose of clarifying an Offer.
- D. The Authority shall retain any clarifications in the Procurement File.

R18-15-814. Responsibility of Offerors

- A. The Authority shall determine, at any time during the evaluation period and before Award, whether an Offeror is responsible or nonresponsible. A finding of nonresponsibility shall not be construed as a violation of the rights of any Person.
- B. The unreasonable failure of an Offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of nonresponsibility with respect to the Offeror.
- C. Information furnished by an Offeror pursuant to this section shall not be disclosed outside of the Authority without prior written consent by the Offeror except to law enforcement agencies.
- D. The Authority may consider the following factors before determining that an Offeror is responsible or nonresponsible:
 - 1. The Offeror's financial, Business, personnel, or other resources, including Subcontractors;
 - 2. The Offeror's record of performance and integrity;

3. Whether the Offeror has been debarred or suspended;
 4. Whether the Offeror is legally qualified to contract with the Authority;
 5. Whether the Offeror promptly supplied all requested information concerning its responsibility;
and
 6. Whether the Offeror meets any responsibility criteria specified in the Solicitation.
- E.** The Authority shall promptly notify the Offeror in writing of the final determination that the Offer is nonresponsible unless the Authority determines notification to the Offeror would compromise the Authority's ability to negotiate with other Offerors. The Authority shall file a copy of the determination in the Procurement File.
- F.** For the Offeror awarded a Contract, the Authority's signature on the Contract constitutes a determination that the Offeror is responsible.

R18-15-815. Negotiations with Responsible Offerors and Revisions of Offers

- A.** Negotiations may be conducted with responsible Offerors who submit Offers determined to be reasonably susceptible to being selected for Award for the purpose of clarification to ensure full understanding of the Solicitation requirements and to permit revision of Offers. The Authority shall ensure there is no disclosure of one Offeror's price, or any information derived from competing Offers to another Offeror. The Authority shall establish procedures and schedules for conducting Negotiations.
- B.** Negotiations may be conducted orally or in writing. If oral Negotiations are conducted, the Authority shall confirm the Negotiations in writing and provide a copy to the Offeror.
- C.** If Negotiations are conducted, Negotiations shall be conducted with all Offerors determined to be in the Competitive Range or reasonably susceptible for Award. Offerors may revise Offers based on Negotiations provided that any revision is confirmed in writing.
- D.** The Authority may conduct Negotiations with responsible Offerors to improve Offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the Authority based on the requirements and the evaluation factors set forth in the Solicitation.
- E.** Responsible Offerors determined to be susceptible for Award and within the Competitive Range with which Negotiations have been held, may revise their Offer in writing during Negotiations.
- F.** An Offeror may withdraw an Offer at any time before the final Offer revision due date and time by submitting a written request to the Authority.

R18-15-816. Determination of Not Susceptible for Award

- A. The Authority may determine at any time during the evaluation period and before Award that an Offer is not susceptible for Award or not within the Competitive Range. The Authority shall place a written determination, based on one or more of the following, in the Procurement File:
1. The Offer fails to substantially meet one or more of the mandatory requirements of the Solicitation;
 2. The Offer fails to comply with any susceptibility criteria identified in the Solicitation; or
 3. The Offer is not susceptible for Award or is not within the Competitive Range in comparison to other Offers based on the criteria set forth in the Solicitation. When there is doubt as to whether an Offer is susceptible for Award or is in the Competitive Range, the Offer should be included for further consideration.
- B. The Authority shall promptly notify the Offeror in writing of the final determination that the Offer is not susceptible for Award or not within the Competitive Range, unless the Authority determines notification to the Offeror would compromise the Authority's ability to negotiate with other Offerors.

R18-15-817. Offer Revisions and Best and Final Offers

- A. The Authority may request one or more written revisions to an Offer. The Authority shall include in the written request:
1. The date, time, and place for submission of Offer revisions; and
 2. A statement that if Offerors do not submit a written notice of withdrawal or a written Offer revision, their immediate previous written Offer revision will be accepted as their final Offer.
- B. The Authority shall request best and final Offers from any Offeror with whom Negotiations have been conducted, unless the Offeror has been determined to be nonresponsible under R18-15-814, or not within the Competitive Range or not susceptible for Award under R18-15-816. The Authority shall include in the written request:
1. The date, time, and place for submission of the best and final Offer; and
 2. A statement that if Offerors do not submit a written best and final Offer, their immediate previous written Offer will be accepted as their best and final Offer.
- C. If an apparent mistake, relevant to the Award determination, is discovered after opening of best and final Offers, the Authority shall contact the Offeror for written confirmation. The Authority shall designate a timeframe within which the Offeror shall either:
1. Confirm that no mistake was made and assert that the Offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information;

- b. A request for correction including the corrected Offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal are consistent with fair competition and in the best interest of the Authority.
- D. An Offeror who discovers a mistake in their best and final Offer may request withdrawal or correction in writing, and shall include the following in the written request:
 - 1. Explanation of the mistake and any other relevant information;
 - 2. A request for correction including the corrected Offer or a request for withdrawal; and
 - 3. The reasons why correction or withdrawal are consistent with fair competition and in the best interest of the Authority.
- E. In response to a request made under subsections (C) or (D), the Authority shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the Authority. If an Offeror does not provide written confirmation of the best and final Offer, the Authority shall make a written determination that the most recent written Offer submitted is the best and final Offer.

R18-15-818. Evaluation of Offers

The Authority shall evaluate best and final Offers based on the evaluation criteria contained in the Solicitation. The Authority shall not modify evaluation criteria or their relative order of importance after Offer due date and time.

R18-15-819. Contract Award

- A. The Authority shall Award the Contract to the responsible Offeror whose Offer is determined to be most advantageous to the Authority based on the evaluation factors set forth in the Solicitation. The Authority shall make a written determination explaining the basis for the Award and place the determination, including any evaluation report or other supporting documentation, in the Procurement File. This subsection shall not apply to any Solicitation cancelled by the Authority prior to an Award.
- B. The Authority shall notify all Offerors of an Award.
- C. After Contract Award, the Authority shall return any Offer security provided by the Offeror as part of the Offer submission.
- D. Within thirty Days after Contract Award the Authority shall make the Procurement File, including all Offers, available for public inspection, redacting information that is confidential under R15-18-807. A copy of the non-redacted information, if pertinent to the functioning of the Contract, shall be retained for reference in the Contract file, but marked confidential and not made available for public review.

R18-15-820. Mistakes Discovered After Award

- A.** If a mistake in the Offer is discovered after the Award, the Offeror may request correction or withdrawal in writing, and shall include all of the following in their written request:
1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected Offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Authority.
- B.** Based on the considerations of fair competition and the best interest of the Authority, the Authority may:
1. Allow correction of the mistake;
 2. Cancel all or part of the Award; or
 3. Deny correction or withdrawal.
- C.** After cancellation of all or part of an Award, if the Offer acceptance period has not expired, the Authority may Award all or part of the Contract to the next responsible Offeror whose Offer is determined to be the next most advantageous to the Authority according to the evaluation factors contained in the Solicitation.

R18-15-821. Protest of Solicitations and Contract Awards

- A.** Any Interested Party may protest a Solicitation, a determination of not susceptible for Award, the Award of a Contract.
- B.** The Interested Party shall file the protest in writing with the Authority and shall include the following information:
1. The name, address, and telephone number of the Interested Party;
 2. The signature of the Interested Party or the Interested Party's representative;
 3. Identification of the Solicitation or Contract number;
 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 5. The form of relief requested.
- C.** If the protest is based upon alleged improprieties in a Solicitation that are apparent before the Offer due date and time, the Interested Party shall file the protest before the Offer due date and time.
- D.** In cases other than those covered in subsection (C), the Interested Party shall file the protest within ten Days after the Authority makes the Procurement File available for public inspection.

- E. The Interested Party may submit a written request to the Director for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the Authority that resulted in the Interested Party being unable to submit the protest within the ten Days. The Director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.
- F. If the Interested Party shows good cause, the Director may consider a protest that is not timely filed.
- G. The Director shall, upon request, furnish copies of the protest to all Offerors subject to the provisions of R18-15-807.

R18-15-822. Stay of Procurements During the Protest

- A. If a protest is filed before the Solicitation due date, before the Award of a Contract, or before performance of a Contract has begun, the Authority shall make a written determination to either:
 - 1. Proceed with the Award or Contract performance, or
 - 2. Stay all or part of the Procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Authority.
- B. The Authority shall provide the Interested Party and all Offerors with a copy of the written determination.
- C. The Director may stay all or part of the Procurement if it is determined that there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Authority. Determination of the stay decision shall be issued no later than the time of issuance of the Authority's decision in accordance with R18-15-824.
- D. The Director may consider any protest that is not filed timely if:
 - 1. The Interested Party shows good cause; or
 - 2. The Director finds there is good cause.

R18-15-823. Protest Dismissal

- A. The Director shall dismiss, upon written determination, a protest in whole or in part before scheduling a hearing if:
 - 1. The protest does not state a valid basis for protest; or
 - 2. The protest is untimely as prescribed under R18-15-821
- B. The Director shall notify the Interested Party, the Authority, and the Board in writing of a determination to dismiss a protest.

R18-15-824. Resolution of Solicitation and Contract Award Protests

- A.** The Director has the authority to resolve a protest. The Director shall issue a written recommended decision within twenty-one Days after a protest has been filed under R18-15-821. The recommended decision contain:
1. The protest;
 2. The Offer submitted by the Interested Party;
 3. The Offer of the firm that is being considered for Award;
 4. The Solicitation, including the specifications or portions relevant to the appeal;
 5. The abstract of Offers or relevant portions;
 6. Any other documents that are relevant to the protest; and
 7. The basis for the decision.
- B.** The Director shall furnish the recommended decision to the Board, with a copy to the Interested Party, by any method that provides evidence of receipt.
- C.** Within thirty Days after the date the Director issues the written recommended decision, the Board shall review the recommended decision and accept, reject, or modify it. If the Board rejects or modifies the recommended decision, the Authority shall issue the rejection or modification and a written justification setting forth the reasons for the rejection or modification to the Interested Party. The decision of the Board is a final administrative decision.

R18-15-825. Remedies by the Authority

- A.** If the Authority sustains a protest in whole or part and determines that a Solicitation, a determination of not susceptible for Award, or Contract Award does not comply with the Procurement statutes and regulations, the Authority shall implement an appropriate remedy.
- B.** In determining an appropriate remedy, the Authority shall consider all the circumstances surrounding the Procurement or proposed Procurement including:
1. The seriousness of the Procurement deficiency;
 2. The degree of prejudice to other interested parties or to the integrity of the Procurement system;
 3. The good faith of the parties;
 4. The extent of performance;
 5. The costs to the Authority;
 6. The urgency of the Procurement;
 7. The impact on the agency's mission; and
 8. Other relevant issues.

C. The Authority may implement any of the following appropriate remedies:

- 1. Decline to exercise an option to renew under the Contract;**
- 2. Terminate the Contract;**
- 3. Amend the Solicitation;**
- 4. Issue a new Solicitation;**
- 5. Award a Contract consistent with this Article; or**
- 6. Render such other relief as determined necessary to ensure compliance with this Article.**

R18-15-826. Provisions for Construction Contracts

A. Any Contract for Construction of a Water-Related Facility procured through the provisions of this Article, shall contain the following:

- 1. Requirement for performance and payment bonds or other security in a manner similar to those required under A.R.S. § 41-2574. The Authority may require performance and payment bonds or other security in amounts greater than those required under A.R.S. § 41-2574.**
- 2. Requirement for retention of payments by the Authority as insurance for the proper performance of the Contract in a manner similar to that required by A.R.S. § 41-2576. The Authority may require retention in amounts greater than those required by A.R.S. § 41-2576.**
- 3. Requirement for progress payments made by the Authority to the Contractor in a manner similar to that required under A.R.S. § 41-2577. The Authority may specify a progress payment schedule that differs from that required by A.R.S. § 41-2577.**
- 4. Provisions similar to those required under A.R.S. § 41-2580. The Authority may specify additional requirements.**

B. Pursuant to A.R.S. § 41-2501(C), the Authority adopts A.R.S. § 41-2583 for any Contract for Construction of a Water-Related Facility procured through the provisions of this Article.

C. The Authority may require that any Construction of a Water-Related Facility be subject to oversight by State of Arizona personnel.