

**AGENCY RECEIPT**

**NOTICE OF EXPEDITED RULEMAKING**

**1. Agency name:** Arizona Department of Administration (ADOA)

**2. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R2-7-101	Amend
R2-7-B306	Amend
R2-7-B307	Amend
R2-7-C302	Amend
R2-7-C306	Amend
R2-7-C307	Amend
R2-7-C315	Amend
R2-7-501	Repeal
R2-7-505	Amend
R2-7-511	Amend
R2-7-B901	Amend
R2-7-B902	Amend
R2-7-B903	Amend

**2. Identifying information for the type of notice filed, such as a title or subject:** Arizona Administrative Code (A.A.C.) Title 2, Chapter 7

**AGENCY RECEIPT**

**NOTICE OF EXPEDITED RULEMAKING**

**1. Agency name:** Arizona Department of Administration (ADOA)

**2. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R2-7-101	Amend
R2-7-B306	Amend
R2-7-B307	Amend
R2-7-C302	Amend
R2-7-C306	Amend
R2-7-C307	Amend
R2-7-C315	Amend
R2-7-501	Repeal
R2-7-505	Amend
R2-7-511	Amend
R2-7-B901	Amend
R2-7-B902	Amend
R2-7-B903	Amend


**2. Identifying information for the type of notice filed, such as a title or subject:** Arizona Administrative Code (A.A.C.) Title 2, Chapter 7

**AGENCY CERTIFICATE**  
**NOTICE OF EXPEDITED RULEMAKING**

1. **Agency name:** Arizona Department of Administration (ADOA)
2. **Chapter heading:** Department of Administration - State Procurement Office
3. **Code citation for the Chapter:** Arizona Administrative Code (A.A.C.) Title 2, Chapter 7
4. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, in numerical order:**

<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R2-7-101	Amend
R2-7-B306	Amend
R2-7-B307	Amend
R2-7-C302	Amend
R2-7-C306	Amend
R2-7-C307	Amend
R2-7-C315	Amend
R2-7-501	Repeal
R2-7-505	Amend
R2-7-511	Amend
R2-7-B901	Amend
R2-7-B902	Amend
R2-7-B903	Amend

5. **The rules contained in this package are true and correct as proposed:**

6.  03/04/2022  
Signature of Agency Chief Executive Officer Date signed

Andy Tobin Director  
Printed or typed name of signer Title of signer


7. **No changes have been made to these rules since the Governor's Regulatory Review Council approved the rules.**

**AGENCY CERTIFICATE**  
**NOTICE OF EXPEDITED RULEMAKING**

1. **Agency name:** Arizona Department of Administration (ADOA)
2. **Chapter heading:** Department of Administration - State Procurement Office
3. **Code citation for the Chapter:** Arizona Administrative Code (A.A.C.) Title 2, Chapter 7
4. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, in numerical order:**

<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R2-7-101	Amend
R2-7-B306	Amend
R2-7-B307	Amend
R2-7-C302	Amend
R2-7-C306	Amend
R2-7-C307	Amend
R2-7-C315	Amend
R2-7-501	Repeal
R2-7-505	Amend
R2-7-511	Amend
R2-7-B901	Amend
R2-7-B902	Amend
R2-7-B903	Amend

5. **The rules contained in this package are true and correct as proposed:**

6.  03/04/2022  
Signature of Agency Chief Executive Officer Date signed

Andy Tobin Director  
Printed or typed name of signer Title of signer


7. **No changes have been made to these rules since the Governor's Regulatory Review Council approved the rules.**

**AGENCY CERTIFICATE**  
**NOTICE OF EXPEDITED RULEMAKING**

1. **Agency name:** Arizona Department of Administration (ADOA)
2. **Chapter heading:** Department of Administration - State Procurement Office
3. **Code citation for the Chapter:** Arizona Administrative Code (A.A.C.) Title 2, Chapter 7
4. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, in numerical order:**

<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R2-7-101	Amend
R2-7-B306	Amend
R2-7-B307	Amend
R2-7-C302	Amend
R2-7-C306	Amend
R2-7-C307	Amend
R2-7-C315	Amend
R2-7-501	Repeal
R2-7-505	Amend
R2-7-511	Amend
R2-7-B901	Amend
R2-7-B902	Amend
R2-7-B903	Amend

5. **The rules contained in this package are true and correct as proposed:**

6.  03/04/2022  
Signature of Agency Chief Executive Officer Date signed

Andy Tobin Director  
Printed or typed name of signer Title of signer

7. **No changes have been made to these rules since the Governor's Regulatory Review Council approved the rules.**

**NOTICE OF PROPOSED EXPEDITED RULEMAKING**

**TITLE 2. ADMINISTRATION**

**CHAPTER 7. DEPARTMENT OF ADMINISTRATION - STATE PROCUREMENT OFFICE**

**PREAMBLE**

- | <b><u>1. Article, Part, or Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
|---|---------------------------------|
| R2-7-101  | Amend                           |
| R2-7-B306   | Amend                           |
| R2-7-B307   | Amend                           |
| R2-7-C302   | Amend                           |
| R2-7-C306   | Amend                           |
| R2-7-C307   | Amend                           |
| R2-7-C315   | Amend                           |
| R2-7-501  | Repeal                          |
| R2-7-505  | Amend                           |
| R2-7-511  | Amend                           |
| R2-7-B901   | Amend                           |
| R2-7-B902   | Amend                           |
| R2-7-B903   | Amend                           |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
Authorizing Statutes: A.R.S. §§ 41-703(6), 41-2511, and 41-2514  
Implementing Statutes: A.R.S. §§ 41-2501 through 41-2673
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed expedited rulemaking:**  
Notice of Rulemaking Docket Opening: 28 A.A.R. ####, Month dd, 2022 *(to be completed by rules editor)*

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

Name: Jessica Klein, Compliance Deputy Assistant Director

Address: Department of Administration  
State Procurement Office  
100 N. 15th Ave., Suite 305  
Phoenix, AZ 85007

Telephone: (602) 350-0339

E-mail: [Jessica.Klein@azdoa.gov](mailto:Jessica.Klein@azdoa.gov) or [SPOCompliance@azdoa.gov](mailto:SPOCompliance@azdoa.gov)

**5. An agency’s explanation why the proposed expedited rule should be made, amended, repealed, or renumbered under A.R.S. § 41-1027(A) and why expedited proceedings are justified under A.R.S. § 41-1001(18)(c):**

The State Procurement Office (SPO) of the Arizona Department of Administration (ADOA) seeks expedited rulemaking under A.R.S. § 41-1027(7). The rules that govern procurement are in Arizona Administrative Code (A.A.C.) Title 2, Chapter 7. The Department conducted its five-year review of rules for the year 2020, completed in 2021. After receiving an exception from the rulemaking moratorium pursuant to Executive Order 2020-02 in November 2021, the Department would like approval to modify or remove the aforementioned rules to address the concerns discovered during the five-year rule review process. The changes to the Arizona Procurement Code (APC) requested in this process would not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Instead, the requested changes would reduce burdens to statewide procurement procedures due to outdated requirements without compromising quality. Furthermore, rule changes are proposed to improve processes and increase efficiency and transparency in public procurement.

A number of the current rules are outdated, because they reference a procurement process that relies on bids and offers sent in the mail. Modification of these rules would clarify that the procurement processes should be performed, whenever possible, through the State’s electronic procurement system (eProcurement system), which has been the State’s process for over a decade. These revisions are to the definitions section of the APC to include the term “eProcurement” (A.A.C. R2-7-101), the bid and offer opening process to clarify that bids and offers may be opened electronically (A.A.C. R2-7-B306 and R2-7-C306), and in the sections regarding late bids and offers to add language to make clear that potential suppliers should allow themselves sufficient time to properly file their bids and offers, so they are not excluded as late. (A.A.C. R2-7-B307 and R2-7-C307).

ADOA has also identified areas of the APC which should be revised to remove extra steps from the procurement process and to modernize construction procurement. The proposed revision to A.A.C. R2-7-C315 would remove a barrier to the use of second best-and-final offer in solicitation negotiations. Within the construction procurement rules, General Services Division (GSD) of ADOA has identified one rule which may be removed as it adds no value or guidance to the APC (A.A.C. R2-7-501). Another rule has an extraneous clause which may be removed, as it references non-existent spending limits (A.A.C. R2-7-505). GSD would also like to modify a rule to allow for increased use of job-order contracting (JOC) consistent with current best practices in construction contracting (A.A.C. R2-7-511).

The last set of changes are updates to the contract claims process to reduce litigation. One amendment would clarify that the 180-day limit is a statute of limitations for claims (A.A.C. R2-7-B901). The other changes would confirm that agencies should attempt to negotiate with suppliers prior to litigating a claim, with flexible timetables for completing negotiations that formally incorporate the available informal settlement process into the timeline prior to litigation (A.A.C. R2-7-B902).

The last proposed modifications would be a simple change to make the rules consistent (A.A.C. R2-7-B903) and one to correct an existing typographical error in a citation in the rule (A.A.C. R2-7-C302).

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

The Department did not review 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 Department 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:**

Not applicable.

**10. Where, when, and how persons may provide written comment to the agency on the proposed expedited rule under A.R.S. § 41-1027(C):**

Close of record: Monday, May 2, 2022, 5:00 p.m. A person may submit written comments on the proposed expedited rules no later than the close of record to [SPOCompliance@azdoa.gov](mailto:SPOCompliance@azdoa.gov) or via the [Rule Revisions Feedback Form \(click for link\)](#).

An oral proceeding will be held on Thursday, April 14, 2022, 11:00 a.m., virtually, using the link below. Comments may be made at the oral proceeding.

To join virtually:

Meeting ID

[meet.google.com/pjo-paxq-sag](https://meet.google.com/pjo-paxq-sag)

Live stream

[stream.meet.google.com/stream/c24ac5d1-69b0-4c05-a135-27082bf5ff0e](https://stream.meet.google.com/stream/c24ac5d1-69b0-4c05-a135-27082bf5ff0e)

To join by phone only: (US)+1 405-349-3143 and Access code/PIN: 345 488 818# or click on “[More phone numbers](#)”

**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:**

**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 issuance of a regulatory 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 federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Federal laws do not apply to the rules.

- 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 such 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 rule follows:**

#### **ARTICLE 1. GENERAL PROVISIONS**

Section

R2-7-101. Definitions

#### **ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION**

##### **PART B. COMPETITIVE SEALED BIDDING**

Section

R2-7-B306. Receipt, Opening, and Recording of Offers

R2-7-B307. Late Offers, Modifications, Withdrawals

##### **PART C. COMPETITIVE SEALED PROPOSALS**

Section

R2-7-C302. Pre-offer Conferences

R2-7-C306. Receipt, Opening, and Recording of Offers

R2-7-C307. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

R2-7-C315. Offer Revisions and Best and Final Offers

#### **ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIC PROFESSIONAL SERVICES**

Section

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

R2-7-505. Selection Committee

R2-7-511. Individual Job Order Contracting

**ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES**

**PART B. CONTRACT CLAIMS**

Section

- R2-7-B901. Controversies Involving Contract Claims Against the State
- R2-7-B902. Agency Chief Procurement Officer's Decision
- R2-7-B903. Issuance of a Timely Decision

## ARTICLE 1. GENERAL PROVISIONS

### **R2-7-101. Definitions**

In this Chapter, unless the context otherwise requires:

1. “Affiliate” means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidary relationship, or persons that are similarly affiliated.
2. “Agency chief procurement officer” means the procurement officer within a state governmental unit, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other person within a state governmental unit who does not have this written delegation of authority.
3. “Aggregate dollar amount” means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. “Alternate project delivery methods” means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. “Arizona Procurement Code” means A.R.S. Title 41, Chapter 23 and this Chapter.
6. “Arizona state contract” means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. “Award” means a determination by the state that it is entering into a contract with one or more offerors.
8. “Best and Final Offer” means a revision to an offer submitted after negotiations are completed that contain the offeror’s most favorable terms for price, service, and products to be delivered.
9. “Bid” means an offer in response to solicitation.
10. “Bidder” means “offeror” as defined in R2-7-101(34).
11. “Brand name or equivalent specification” means a written description that uses one or more manufacturers’ product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
12. “Brand name specification” means a written description limited to a list of one or more items by manufacturers’ product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
13. “Clergy” includes the same persons described in A.R.S. § 32-3271(A)(3).
14. “Component” means a part of a manufactured product.

15. "Contract amendment" means a written modification of a contract under A.R.S. § 41-2503(8) or a unilateral exercise of a right contained in the contract.
16. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.
17. "Cost-plus-a-percentage-of-cost contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
18. "Day" means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. "Debarment" means an action taken by the director under R2-7-C901 that prohibits a person from participating in the state procurement process.
20. "Defective data" means data that is inaccurate, incomplete, or outdated.
21. "Dentist" means a person licensed under A.R.S. Title 32, Chapter 11.
22. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
23. "Eligible procurement unit" means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency that serves individuals with disabilities as defined in A.R.S. § 41- 2636, that is eligible under a cooperative agreement to use Arizona state contracts.
24. "eProcurement System" means the State's official electronic procurement system as authorized by the state procurement administrator under R2-7-201.
- ~~24-25.~~ "Filed" means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
- ~~25-26.~~ "Finished goods" means units of a manufactured product awaiting sale.
- ~~26-27.~~ "Force account" as used in A.R.S. § 41-2572, means work performed by the state's regularly employed personnel.
- ~~27-28.~~ "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.
- ~~28-29.~~ "In writing" has the same meaning as "written" or "writing" in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.

- ~~29~~30. “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.
- ~~30~~31. “Legal counsel” means a person licensed as an attorney by the Arizona Supreme Court.
- ~~31~~32. “May” means something is permissive.
- ~~32~~33. “Negotiation” means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by this Chapter.
- ~~33~~34. “Offer” means a response to a solicitation.
- ~~34~~35. “Offeror” means a person who responds to a solicitation.
- ~~35~~36. “Physician” means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
- ~~36~~37. “Price data” means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, “prices” refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
- ~~37~~38. “Procurement file” means the official records file of the director whether located in the office of the director, ~~or~~ at a public procurement unit, or in the eProcurement System. The procurement file shall include (electronic or paper) the following:
- a. List of notified vendors,
  - b. Final solicitation,
  - c. Solicitation amendments,
  - d. Bids and offers,
  - e. Offer revisions and best and final offers,
  - f. Discussions,
  - g. Clarifications,
  - h. Final evaluation reports, and
  - i. Additional information, if requested by the agency chief procurement officer and approved by the state procurement administrator.
- ~~38~~39. “Procurement request” means the document that initiates a procurement.
- ~~39~~40. “Proposal” means an offer submitted in response to a solicitation.
- ~~40~~41. “Prospective offeror” means a person that expresses an interest in a specific solicitation.
- ~~41~~42. “Raw materials” means goods, excluding equipment and machinery, purchased for use in manufacturing a product.

~~42-43.~~ “Reverse auction” means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors’ prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.

~~43-44.~~ “Shall” means something is mandatory.

~~44-45.~~ “Small business” means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than \$4 million for the last complete fiscal year.

~~45-46.~~ “Solicitation” means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.

~~46-47.~~ “Source selection method” means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.

~~47-48.~~ “State procurement administrator” means the individual appointed by the director as a chief procurement officer for the state, or a state procurement administrator’s authorized designee. A different title may be used for this position.

~~48-49.~~ “State procurement office” means an office that acts under the authority delegated to the state procurement administrator.

~~49-50.~~ “Suspension” means an action taken by the director under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.

~~50-51.~~ “Trade secret” means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

### **ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION**

#### **PART B. COMPETITIVE SEALED BIDDING**

##### **R2-7-B306. Receipt, Opening, and Recording of Offers**

A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time. When practical, an agency chief procurement officer should use the eProcurement system for this process.

- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall record the name of each offeror, the amount of each offer, and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in subsection (C), the agency chief procurement officer 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.

**R2-7-B307. Late Offers, Modifications, Withdrawals**

- A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation (which may be the eProcurement system), an agency chief procurement officer shall determine the offer, modification, or withdrawal as late. If the eProcurement system is the designated location for the offer, modification, or withdrawal, prospective offerors are responsible for allowing sufficient time to ensure that their submission is properly filed in the eProcurement system by the appropriate due date and time.
- B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
  - 1. The document is received before the 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 purchasing agency.
- C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
  - 1. If the document is hand delivered, refuse to accept 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 agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The agency chief procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

**PART C. COMPETITIVE SEALED PROPOSALS**

**R2-7-C302. Pre-offer Conferences**



An agency chief procurement officer may conduct one or more pre-offer conferences within a reasonable time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with ~~R2-7-B303~~ R2-7-C303.

**R2-7-C306. Receipt, Opening, and Recording of Offers**

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time. When practical, an agency chief procurement officer should use the eProcurement system for this process.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in subsection (C), the agency chief procurement officer 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.

**R2-7-C307. 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 (which may be the eProcurement system), an agency chief procurement officer shall determine the offer, modification, or withdrawal as late. If the eProcurement system is the designated location for the offer, modification, or withdrawal, prospective offerors are responsible for allowing sufficient time to ensure that their submission is properly filed in the eProcurement system by the appropriate due date and time. This rule does not apply to revision or withdrawal of offers as described in R2-7-C314.
- B. The agency chief procurement officer 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 purchasing agency.

- C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer 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 agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The agency chief procurement officer 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.

**R2-7-C315. Offer Revisions and Best and Final Offers**

- A. An agency chief procurement officer may request one or more written revisions to an offer. The agency chief procurement officer 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 will be accepted as their final offer.
- B. An agency chief procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted. The agency chief procurement officer shall include in the written request:
  - 1. The date, time, and place for submission of best and final offer; and
  - 2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.
- C. ~~The agency chief procurement officer shall request written best and final offers only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.~~ D. If an apparent mistake, relevant to the award determination, is discovered after opening of best and final offers, the agency chief procurement officer shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
  - 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
  - 2. Acknowledge that a mistake was made, and include the following in a written response:
    - a. Explanation of the mistake and any other relevant information,
    - b. A request for correction including the corrected offer or a request for withdrawal, and
    - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- E.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 is consistent with fair competition and in the best interest of the state.

**F.E.** In response to a request made under subsections (C) or (D), the agency chief procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the state. If an offeror does not provide written confirmation of the best and final offer, the agency chief procurement officer shall make a written determination that the most recent written best and final offer submitted is the final best and final offer.

## **ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIC PROFESSIONAL SERVICES**

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

~~A. The agency chief procurement officer shall procure specified professional services as defined in A.R.S. § 41-2578 41-2579 and 41-2581 in the following manner:~~

- ~~1. Through existing state contracts if available;~~
- ~~2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 procurements not to exceed the amount prescribed in A.R.S. § 41-2535;~~
- ~~3. May procure services in accordance with A.R.S. §§ 41-2536, 41-2537, or 41-2581.~~

~~B. Unless an alternate project delivery method is used as permitted under R2-7-503, the agency chief procurement officer shall procure construction in the following manner:~~

- ~~1. Through existing state contracts if available;~~
- ~~2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 for single award procurements not to exceed the amount prescribed in A.R.S. § 41-2535 or 41-2579 for multiple award procurements;~~
- ~~3. In accordance with A.R.S. § 41-2533 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or~~
- ~~4. May procure construction in accordance with A.R.S. § 41-2536 or 41-2581.~~

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

- ~~1. Through existing state contracts if available;~~
- ~~2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;~~
- ~~3. May procure construction in accordance with A.R.S. § 41-2536, 41-2537, or 41-2581.~~

**R2-7-505. Selection Committee**

- A. The agency chief procurement officer shall appoint a selection committee when required under A.R.S. §§ 41-2578, 41-2579, or 41-2581.
- B. For the procurement of specified professional services not estimated to exceed the amount prescribed in A.R.S. § 41-2581, the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to five members who are appropriately qualified including the agency chief procurement officer as chair.
- ~~C. For the procurement of specified professional services estimated to exceed the amount prescribed in A.R.S. § 41-2578, 41-2579, or 41-2581.~~

**R2-7-511. Individual Job Order Contracting**

- A. The state procurement administrator may award or authorize an agency chief procurement officer to award job order contracts for ~~job orders estimated to cost \$1,000,000 or less~~ construction, construction services or professional services to a single contractor or multiple contractors.
- ~~B. An agency chief procurement officer may use job order contracting for individual job orders estimated to cost \$250,000 or less, provided that:~~
  - ~~1. The agency chief procurement officer obtains a cost estimate for the job order, before obtaining a cost proposal from the job order contractor; and~~
  - ~~2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.~~Contracts shall be awarded based on scoring of technical proposals, followed by scoring of price proposals.
- ~~C. When authorized by the state procurement administrator, an agency chief procurement officer may use job order contracting for individual job orders estimated to cost more than \$250,000 or less than or equal to \$1,000,000, provided that:~~
  - ~~1. The agency chief procurement officer obtains a cost estimate for the job order from a person as defined in A.R.S. Title 32, Chapter 1, Article 1 before requesting a cost proposal from the job order contractor; and~~
  - ~~2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.~~Price proposals shall be based on an adjustment factor(s) applied to a catalog of construction tasks.
- ~~D. Individual job orders issued under a job order contract shall not exceed \$2,000,000.00, unless authorized by the state procurement administrator.~~
- ~~E. All individual job orders exceeding \$1,000,000 shall obtain authorization from the chief procurement officer of the General Services Division.~~
- ~~E. Upon completion of the job order, the agency chief procurement officer shall document in the contract file a summary of the estimated or final costs and the reasons the award is in the best interests of the state.~~Individual job orders shall include an itemized list of each construction task required to complete the

work with the task's associated unit price and applied adjustment factor.

~~**D.G.** Conduct the procurement, as necessary in accordance with R2-7-B302, R2-7-B311, R2-7-B313, and R2-7-B315, unless a modified process is approved by the state procurement administrator. The agency chief procurement officer may request cost proposals from multiple job order contractors or negotiate with a single job order contractor.~~

~~**E.H.** The agency chief procurement officer may authorize contract change orders or amendments that result in the individual job order cost exceeding \$1,000,000 \$2,000,000 only with authorization from the state procurement administrator.~~

## ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

### PART B. CONTRACT CLAIMS

#### **R2-7-B901. Controversies Involving Contract Claims Against the State**

- A. A claimant shall file a contract claim with the agency chief procurement officer, with a copy to the state procurement administrator, within 180 days after the claim arises. A claim filed after 180 days of the date on which the claim arose shall be considered untimely and rejected. 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 purchasing agency and the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
  5. The form and dollar amount of the relief requested
- B. The agency chief procurement officer shall have the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.

#### **R2-7-B902. Agency Chief Procurement Officer's Decision**

- A. ~~If a claim cannot be resolved under R2-7-B901, the agency chief procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. The agency chief procurement officer shall take reasonable steps to work with the parties to a claim to resolve the claim through either discussions or an informal settlement conference under R2-7-A910. This process may be used to resolve all or some of the issues in a claim.~~
- B. The parties to a claim shall have 60 days to resolve the claim, unless this period is modified by the agency chief procurement officer as described in this subsection. The agency chief procurement officer may end

the 60-day period early, if the agency chief procurement officer determines that the claim cannot be resolved through either discussions or an informal settlement conference under R2-7-A910 under R2-7-B901. The agency chief procurement officer may also allow additional time for the parties to resolve the claim, if all the parties to the claim have requested additional time to resolve the claim.

C. If any issues in the claim are not resolved by a mutual agreement between the parties to the claim as described in subsections A and B of this section, then the agency chief procurement officer shall issue a decision within 60 days of the end of the time period for discussions or settlement described in subsection B of this section. (~~continued from A~~) Before issuing a ~~final~~ decision, the agency chief procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors. Upon a showing of good cause, the director may grant the agency chief procurement officer up to 30 additional days to issue this decision.

**B.D.** The agency chief procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. 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 agency chief procurement officer's decision, with supporting rationale; and
5. A paragraph which substantially states: "This is the final decision of the agency chief procurement officer. This decision may be appealed to the director of the Department of Administration. If you appeal, you must file a written notice of appeal containing the information required in R2-7-B904(B) with the director within 30 days from the date you receive this decision."

### **R2-7-B903. Issuance of a Timely Decision**

If the agency chief procurement officer fails to issue a decision within ~~60 days after the request is filed~~ the appropriate time period as described in R2-7-B902, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.