

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
ARIZONA CODE OF JUDICIAL	)	Administrative Order
ADMINISTRATION § 1-402:	)	No. 2013 – <u>87</u>
PROCUREMENT CODE FOR THE	)	(Affecting Administrative
JUDICIAL BRANCH	)	Order Nos. 2007-24 and
	)	2013-44)

An amendment to the above-captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on October 17, 2013, and having been approved and recommended for adoption,

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 1-402 is amended as indicated on the attached document. All other provisions of § 1-402, as originally adopted, remain unchanged and in effect.

IT IS FURTHER ORDERED that these rules will govern any procurements issued on or after the effective date of this Order in any courts that have adopted the Judicial Branch Procurement Rules.

IT IS FURTHER ORDERED that Administrative Order No. 2013-44 is rescinded and that the provisions of ACJA § 1-402, as amended, shall govern procurement conducted by the Administrative Office of the Courts commencing with the effective date of this Order.

Dated this 24th day of October, 2013.

REBECCA WHITE BERCH
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 4: Financial Administration
Section 1-402: Procurement Code for the Judicial Branch

A. Contents.

A. Contents
B. Purpose
C. Applicability and Exceptions
D. Definitions
E. Administration
F. Surplus Property
G. Authority and Liability
H. Competitive Sealed Bidding (Invitation for Bids (IFB))
I. Competitive Sealed Proposals (Request for Proposals (RFP))
J. Request for Qualification (RFQ)
K. Sole Source Procurement
L. Emergency Procurement
M. Alternative Means of Procurement
N. Record of Sole Source and Emergency Contracts
O. Rejection or Cancellation
P. Determination of Susceptibility for Award
Q. Determination of Responsibility
R. Contract Award
S. Bid and Performance Security
T. Cost or Pricing Data
U. Contract Form
V. Multi-year Contracts
W. Multi-term Contracts
X. Inspection, Records and Audit
Y. Specifications
Z. Construction and Professional Services
AA. Certain Purchases in Excess of \$100,000
BB. Purchases not Exceeding an Aggregate Amount of \$100,000
CC. Request for Information
DD. On-line Bidding and Electronic Transactions
EE. Procurement Appeals/Protests Procedures

A.B. Purpose. The purpose of the Procurement ~~Rules~~ Code for the Judicial Branch is to:

1. Establish a procurement policy for the judicial branch;
2. ~~Allow for the continued development of procurement policies and practices for the judicial branch;~~

- ~~32.~~ Make as consistent as possible the procurement laws, policies, and practices among the various courts operating under ~~these rules~~ this Code;
- ~~4.~~ ~~Promote public confidence in the procedures followed in public procurement and safeguards for maintenance of a judicial branch procurement system of quality and integrity;~~
- ~~53.~~ Provide for the fair and equitable treatment of all persons who ~~do business~~ deal with the ~~courts operating under these rules~~ procurement system of the Arizona Judicial Branch;
- ~~64.~~ Provide economies, where possible, in judicial branch procurement activities and maximize to the fullest extent practicable, the purchasing value of public monies;
- ~~75.~~ Foster effective broad-based competition ~~within the free enterprise system~~ regarding ~~purchases by courts operating under these rules~~ judicial branch procurement activities; and
- ~~86.~~ ~~Obtain in a cost effective and responsive manner the materials, services, and construction required by the courts operating under these rules in order to better serve the state's residents and businesses and to allow for the timely performance of responsibilities~~ Provide safeguards for Judicial Branch procurement quality and integrity.

BC. Applicability and Exceptions.

1. The Procurement ~~Rules~~ Code for the Judicial Branch ~~apply~~ applies to:
 - ~~a.~~ ~~purchases made by any personnel of~~ the supreme court, including the Administrative Office (AOC) of the Courts, the court of appeals, the Commission on Judicial Conduct, and the commissions on appellate and trial court appointments. As used in this Code, the term "Judicial Branch Unit" means any of the above-named courts and commissions.
 - ~~2.~~ ~~b.~~ ~~The Procurement Rules for the Judicial Branch apply to purchases made by any personnel of~~ The superior court, justice courts, and municipal courts as if adopted by the presiding judge of the superior court in the county. As used in this Code, the term "Judicial Branch Unit" means any of the above-named courts if adopted by the presiding judge of the superior court for that court. If the Procurement Rules for the Judicial Branch are not adopted for any courts in a county, the presiding judge of the superior court in the county shall have forwarded to the Administrative Office of the Courts (AOC), Finance Office a copy of the county or city procurement rules, policies or procedures under which these courts operate. These rules shall rules, policies or procedures shall be substantially equivalent to the state procurement rules and the Procurement Rules for the Judicial Branch. They shall be resubmitted by the presiding judge whenever changes are made.

2. If a court elects to follow its local county or city procurement rules, policies, and procedures, the local rules, policies, and procedures should be substantially equivalent to the state procurement rules or this Code.
3. This Code applies to every procurement requiring expenditure of public monies except:
 - a. State subsidies, grant contracts, or similar financial agreements between the supreme court, any political subdivision, and any court of the Arizona Judiciary or any financial agreement made pursuant to law, the Arizona Constitution, or other order or rule of the Arizona Supreme Court.
 - b. Contracts or agreements entered into by the supreme court pursuant to A.R.S. § 12-108(A) to have published and printed the report of decisions of the Arizona Supreme Court and Court of Appeals.
 - c. Other published and printed material related to the Arizona Supreme Court's constitutional rule-making authority, administrative supervision over all the courts of the state, and any other constitutional responsibility.
 - d. Leases of real property and space leases or rentals.
 - e. Contracts or agreements entered into with the National Center for State Courts or the State Bar of Arizona.
 - f. Agreements in settlement of litigation or threatened litigation.
 - g. 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 proceeding in which the Judicial Branch Unit is or may become a party.
 - h. Contracts or agreements for preparation, administration, or grading of the Arizona State Bar Examination.
 - i. Intergovernmental agreements for services or joint exercise of powers common to the contracting parties as prescribed in A.R.S. § 11-952.
 - j. Interagency agreements.
5. A Judicial Branch Unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any materials, services, professional services, construction, or construction services with one or more public procurement units in accordance with an agreement entered into between the participants.
6. A Judicial Branch Unit may purchase from a contract awarded by the State of Arizona or other federal, state, or local agencies using a competitive procurement process.

7. Notwithstanding subsections (H)(1) and (I)(1), a Judicial Branch Unit may use general services administration (GSA) contracts for materials or services, if the respective designee or delegate determines all of the following apply:
- a. The price is equal to or less than the contractor's current federal supply contract price.
 - b. The contractor has indicated in writing that the contractor is willing to extend the current federal supply contract pricing, terms, and conditions, and will agree to the court's standard terms and conditions, including those providing for insurance and indemnification.
 - c. The purchase order or work order for materials or services adequately identifies the GSA contract on which the order is based.
 - d. It is cost-effective and in the best interests of the Judicial Branch Unit.
8. A demonstration project may be undertaken if the respective designee determines in writing that the project is innovative and unique. The Judicial Branch Unit shall not be obligated to pay the contractor, or to procure or lease the services or materials supplied by the contractor. If the project is successful, on the written request and justification by the procurement officer, and written determination by the respective designee that it is in the best interest of the Judicial Branch Unit, the Judicial Branch Unit may pay the contractor for the demonstration project without conducting a competitive procurement under this Code. The written request shall be submitted within 12 months after the demonstration project begins or within 12 months after the demonstration project ends. The term of the contract resulting from a demonstration project shall not exceed two years. A request and written determination of the basis for the contract award shall be included in the contract file. A contract to procure or lease services or materials previously supplied during a demonstration project shall be conducted under this Code.

CD. Content Definitions. ~~The Procurement Rules for the Judicial Branch can be accessed on the Arizona Supreme Court internet site at: <http://supreme.state.az.us/rfp> or by contacting the Arizona Supreme Court, Finance Office at 1501 West Washington, Phoenix, Arizona.~~ For purposes of this Code, the following definitions are adopted:

"Administrative director" means the Administrative Director of the Courts.

"Advantageous" means in the best interest of the Judicial Branch Unit as solely determined by the respective designee or delegate.

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

"Change order" means a written order that is signed by the respective designee or delegate, and that directs the contractor to make changes that the changes clause of the contract authorizes the respective designee or delegate, to order.

"Clerks of the court" means the clerk of the court for each division of the Arizona Court of Appeals and for the superior court in each county.

"Commission chair" means the Chairman of the Commission on Judicial Conduct.

"Construction:"

a. Means the process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property.

b. Does not include:

(1) The routine operation, routine repair, or routine maintenance of existing facilities, structures, buildings, or real property.

(2) The investigation, characterization, restoration, or remediation due to an environmental issue of existing facilities, structures, buildings, or real property.

"Contract" means all types of state agreements, regardless of what they may be called, for the procurement of materials, services, construction, construction services, or the disposal of materials.

"Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.

"Contractor" means any person or business that has a contract with a Judicial Branch Unit.

"Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.

"Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this code, and a fee, if any.

"Cost-plus-a-percentage-of-cost contract" means a contract in which, prior to the completion of the work, the parties agree that the contractor's fee will be a predetermined percentage of the total cost of the work when the cost is unknown and not subject to a formula or other limitations.

"Data" means documented information, regardless of form or characteristic.

"Days" mean calendar days and shall be computed pursuant to A.R.S. § 1-243.

"Delegate" means a representative of the respective designee duly authorized to enter into and administer contracts and make written determinations with respect to the contracts.

“Demonstration project” means a project in which a vendor supplies a service or material to a Judicial Branch Unit for which the Judicial Branch Unit does not pay but for which the Judicial Branch Unit may be obligated to provide routine support such as utility cost and operating personnel.

“Emergency” means compliance with subsections (H) or (I) is impracticable, unnecessary, or contrary to the Judicial Branch Unit’s best interest due to:

- a. A threat to public health, welfare, or safety;
- b. Any condition creating an immediate and serious need for materials, services, or construction; or
- c. Any condition in which the conservation of public resources is at risk.

"Executive director" means the Executive Director for the Commission on Judicial Conduct.

"General services administration contract" means contracts awarded by the federal General Services Administration.

“Impracticable” means action that would be futile, excessively difficult or expensive, or of little practical value.

"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 subsections (H)(1)–(8).

"Materials" means all property, including equipment, supplies, printing, insurance, and leases of property.

"May" denotes the permissive.

“Multi-step sealed bidding” means a two phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers 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.

“Negotiations” means an exchange of information or any form of communication during which the offeror and the Judicial Branch Unit may alter or otherwise change the conditions, terms, and price of the proposed contract, unless specifically prohibited by this Code.

“On-line bidding” means a procurement process in which a Judicial Branch Unit receives vendors’ bids for goods, services, construction, data processing, telecommunications, or office systems technologies and services electronically over the internet in a real-time, competitive bidding event.

"Person" means any corporation, business, individual, union, committee, club, other organization, or group of individuals, and may also include all courts subject to the Supreme Court's administrative supervision pursuant to Article VI, Section 3 of the Arizona Constitution.

"Presiding judge" means the presiding judge of the Superior Court in each county.

"Procurement:"

- a. Means buying, purchasing, renting or leasing, or otherwise acquiring any materials, services, construction, or construction services.
- b. Includes all functions that pertain to obtaining any materials, services, construction, or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Procurement officer" means any authorized representative acting within the limits of the authorized representative's authority as delegated by the respective designee.

"Public procurement unit" means the department of administration, a political subdivision of this state, any other state, an agency of the United States, or any nonprofit corporation created for the purpose of administering a cooperative purchase.

"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.

"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.

"Request for Proposals" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in subsections (I)(1)-(13).

"Request for Qualification" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in subsections (J)(1)-(15).

"Respective designee" means the Administrative Director of the Courts for the Arizona Supreme Court, including all budgets under its supervision, the Clerks of the Court for the Court of Appeals and the Office of the Clerk of the Superior Court, the Presiding Judges for the Superior Court, the Presiding Justice of the Peace for a Justice Court, the Chief Judge of a Municipal Court, the Executive Director for the Commission on Judicial Conduct, and any other person designated by court order.

"Responsible bidder or offeror" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

"Responsive bidder or offeror" means a person who submits a bid that conforms in all material respects to the Invitation for Bids, Request for Proposals, or Request for Qualification.

"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, but does not include employment agreements or collective bargaining agreements.

"Shall" denotes the imperative.

"Small business" means an independently owned firm, corporation, or establishment having a small number of employees, low volume of sales, small amount of assets, and limited impact on the market, as determined by the Judicial Branch Unit. Small business status is presumed if the business is registered on the list of small businesses maintained by the State Procurement Office.

"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

"Subcontractor" means a person or business that contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with a Judicial Branch Unit.

E. Administration.

1. The respective designee may adopt other administrative practices and procedures consistent with this Code, governing the procurement and management of all materials, services, and construction to be procured by the Judicial Branch Unit, including the disposal of materials.
2. The respective designee for each Judicial Branch Unit may serve as its central procurement officer or designate a procurement officer.
3. Except as otherwise provided in this Code, the respective designee or a designated procurement officer for each Judicial Branch Unit shall, in accordance with this Code:
 - a. Procure or supervise all procurement.
 - b. Manage and maintain the required documentation as prescribed in this Code.

F. Surplus Property. Except as otherwise provided in this Code, the respective designee or delegate for each Judicial Branch Unit shall, in accordance with this Code:

1. Establish guidelines for the management of all inventories of materials.
2. Sell, trade, or otherwise dispose of surplus materials.
3. Dispose of equipment or materials through the Department of Administration Surplus Property Management Office or through a designated local government property disposition office unless, based upon a written plan that explains the advantages of a proposed disposition method, the respective designee of the Judicial Branch Unit determines that:
 - a. The equipment or materials may be exchanged for an item of equal or greater value, or, if in the process of a procurement under this Code, the Judicial Branch Unit may receive a cost reduction for the trade-in of the equipment or materials.
 - b. The equipment or materials may be transferred for the beneficial use elsewhere in the Arizona Judiciary or to a tribal court.
 - c. An alternative disposition method is deemed to be advantageous to the Judicial Branch Unit. Examples of alternate methods include sale, lease, or disposal of surplus materials by public auction or competitive sealed bidding.
 - d. The disposal of computer equipment through a salvage company is a cost effective way to safely destroy secure data efficiently.

G. Authority and Liability.

1. The respective designee for each Judicial Branch Unit may delegate authority for administration of this Code to members of the respective designee's staff.
2. The respective designee or delegate may appoint advisory groups or evaluation committees to assist with respect to specifications, solicitation evaluations, or procurement in specific areas and with respect to any other matters within the respective designee's authority.
3. Members of advisory groups or evaluation committees are not eligible to receive compensation but are eligible for reimbursement of travel related expenses.
4. The evaluation committee, through its chair, may seek technical information from persons outside the committee to obtain the expertise needed to make an informed recommendation.
5. Payment for any services valued at an aggregate amount of \$500.00 or more shall not be made unless pursuant to a written contract or purchase order.

6. A person who contracts for or purchases any material or construction services in a manner contrary to the requirements of this Code is personally liable for the recovery of all public monies paid plus twenty percent of such amounts and legal interest from the date of payment and all costs and damages arising out of the violation of A.R.S. § 41-2616(A).
7. A person who intentionally or knowingly contracts for or purchases any material, services, or construction pursuant to a scheme or artifice to avoid the requirements of this Code is guilty of a Class 4 felony according to A.R.S. § 41-2616(B).
8. A person who serves on an evaluation committee for an invitation for bids, request for proposals, or request for qualification shall disclose any interest in the procurement.
9. A person who serves on an evaluation committee shall sign a statement before reviewing bids or proposals that the person has no interest in the procurement other than that disclosed and will have no contact with any representative of the competing vendors related to the particular procurement during the course of evaluation of bids or proposals (until such time a contract is awarded), except when such person is acting in accordance with these rules.
10. A person who serves on an evaluation committee shall disclose on the statement any contact unrelated to the pending procurement that the person may need to have with a representative of the competing vendors.

H. Competitive Sealed Bidding (Invitation for Bids (IFB)).

1. Contracts shall be awarded by competitive sealed bidding, except as provided in this Code.
2. For competitive sealed bidding a document shall be prepared entitled "Invitation for Bids," which shall be made available to prospective bidders. This document shall include a purchase description, time and place for publicly opening the bids, contractual terms and conditions, and the evaluation criteria.
3. Adequate public notice of the IFB shall be given a reasonable time before the date set forth in the Invitation for opening of bids. Adequate notice may include publication one or more times in a newspaper of general circulation within a reasonable time before bid opening. The publication shall not be less than two weeks before the bid opening. The notice may also be posted at a designated site on a worldwide public network of interconnected computers.
4. Bids shall be opened publicly at the time and place designated in the IFB. The amount of each bid, together with the name of each bidder shall be recorded. This record shall be open to public inspection at the bid opening. The bidder shall designate any trade secret or proprietary information contained in the bid, and where the Judicial Branch Unit

concurs, that content shall remain confidential. The bids shall be open for public inspection after a contract is entered into.

5. Bids shall be unconditionally accepted without alteration or correction, except as authorized in subsection (H)(6). Bids shall be evaluated based on the requirements set forth in the Invitation for Bids. No criteria may be used in bid evaluations that are not set forth in the IFB.
6. Correction or withdrawal of erroneous bids before or within five days after bid opening, based on bid mistakes, may be permitted. In all other instances, after bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interest of the Judicial Branch or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contract based on bid mistakes, shall be supported by a written determination made by the respective designee of the Judicial Branch Unit.
7. The contract shall be entered into with the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the Invitation for Bids and best meets the needs of the Judicial Branch Unit. If all bids for a procurement exceed available monies, and the low responsive and responsible bid does not exceed such monies by more than five percent, the Judicial Branch Unit may, in situations in which time or economic considerations preclude re-solicitation of bids, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, to bring the bid within the amount of available monies.
8. The multi-step sealed bidding method may be used if it is not practical to initially prepare a definitive purchase description that is suitable to permit a contractual agreement based on competitive sealed bidding. An IFB may be issued requesting the submission of technical offers to be followed by an IFB, limited to those bidders whose offers are determined to be acceptable under the criteria set forth in the first solicitation, except that the multi-step sealed bidding method shall not be used for construction contracts.

I. Competitive Sealed Proposals (Request for Proposals (RFP)).

1. A contract for materials or services may be entered into by competitive sealed proposals.
2. Proposals shall be solicited through a Request for Proposals.
3. Adequate public notice of the RFP shall be given pursuant to subsection (H)(3).
4. Proposals shall be opened publicly at the time and place designated in the RFP. The name of each offeror shall be recorded. All other information contained in the proposal shall be confidential, so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The offeror shall designate any trade secret or proprietary information contained in the proposal, and where the Judicial Branch Unit

concur, that content shall remain confidential. The proposals shall be open for public inspection after a contract is entered into.

5. The RFP shall state in advance the relative importance of price and other evaluation factors. Specific numerical weighting is not required. The RFP shall include the criteria used for determining an offeror's responsibility, as well as the proposal's responsiveness and susceptibility for contract award. The evaluation committee shall use no other criteria in its evaluation of proposals.
6. If provided for in the RFP, the procurement officer may engage in discussions with responsible offerors as needed to clarify and assure full understanding of the responsiveness of the proposal to solicitation requirements. All clarifications to proposals shall be in writing. The procurement officer shall not favor one offeror over another in obtaining clarification where needed. There shall be no disclosure of any information derived from proposals submitted by competing offerors.
7. Following consultation with the evaluation committee, the procurement officer shall determine whether proposals are not susceptible for award or are not competitive. A determination that a proposal is not susceptible for award or not competitive shall be in writing, state the basis of the determination, and be retained in the procurement file.
8. The procurement officer may issue a written request for best and final offers from all offerors whose proposals are susceptible to an award. If the procurement officer has established a list of competitive proposals, the procurement officer may issue a request for best and final offers from all offerors whose proposals are competitive. The request shall set forth the date, time, and place for the submission of best and final offers. The request for a best and final offer shall inform offerors that if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.
9. Following consultation with the evaluation committee, the procurement officer shall identify the offeror whose proposal is most advantageous to the Judicial Branch Unit. A determination that an offeror's proposal is most advantageous to the Judicial Branch Unit shall be in writing, state the basis of the determination, and be retained in the procurement file.
10. The respective designee or delegate is authorized to conduct negotiations with the offeror(s) whose proposal has been determined in the selection process to be most advantageous to the Judicial Branch Unit. The procurement officer shall coordinate any negotiations.
11. Any response to a procurement officer's request for clarification of a proposal made during negotiations shall be in writing. The procurement officer shall keep a record of all negotiations.

12. Negotiations shall not constitute a contract award nor shall it confer any property rights on the successful offeror. If negotiations are conducted and an agreement is not reached, the Judicial Branch Unit may enter into negotiations with the next highest ranked offeror whose proposal is susceptible to an award without the need to advise other offerors or repeat the formal solicitation process. The contract shall be awarded in accordance with subsection (R).
13. If the request for proposals provides for multiple contracts, more than one proposal may be determined to be most advantageous to the Judicial Branch Unit and negotiated pursuant to this Code.

J. Request for Qualification (RFQ).

1. Contracts may be entered into by issuance of a Request for Qualification, except this method shall not be used for construction contracts.
2. Qualified respondents shall be solicited through an RFQ.
3. The RFQ method shall only be used for procurement of contracts for services in which no warranty, express or implied, is made by the Judicial Branch Unit to the contractor that any services will be purchased during the term of the contract. Contracts awarded pursuant to an RFQ shall state that the services are being purchased only on an "as needed" basis, and shall further be subject to the provisions of subsections (Q)(3) and (Y)(3).
4. Adequate public notice of the RFQ shall be given pursuant to subsection (H)(3).
5. Responses to an RFQ shall be opened publicly at the time and place designated in the RFQ. The name of each respondent shall be recorded. All other information contained in the response shall be confidential, so as to avoid disclosure of contents prejudicial to competing respondents during the process of negotiation. The respondent shall designate any trade secret or proprietary information contained in the response, and where the Judicial Branch Unit concurs, that content shall remain confidential. The responses shall be open for public inspection after a contract is entered into.
6. The RFQ shall state in advance the relative importance of all evaluation factors. Specific numerical weighting is not required. The RFQ shall include the criteria used for determining a respondent's responsibility, as well as, the response is responsiveness and susceptibility for contract award. The evaluation committee shall use no other criteria in its evaluation of responses. Responses to the RFQ shall include detailed and specific information as to the services to be provided for the cost proposed and a complete explanation of how the proposed cost was determined.
7. A Judicial Branch Unit may include in the RFQ a "continuing" qualification period that allows the procurement officer to qualify respondents throughout the term of the contract, rather than a specified response deadline as defined in the RFQ.

8. If provided for in the RFQ, the procurement officer may engage in discussions with responsible respondents as needed to clarify and assure full understanding of the responsiveness of the responses to solicitation requirements. All clarifications to responses shall be in writing. The procurement officer shall not favor one respondent over another in obtaining clarification where needed. There shall be no disclosure of any information derived from responses submitted by competing respondents.
9. Following consultation with the evaluation committee, the procurement officer shall determine whether responses are not susceptible for award. A determination that a response is not susceptible for award shall be in writing, state the basis of the determination, and be retained in the procurement file.
10. The procurement officer may issue a written request for best and final offers from all respondents whose responses are susceptible to an award. The request shall set forth the date, time, and place for the submission of best and final offers. The request for a best and final offer shall inform respondents that if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.
11. Following consultation with the evaluation committee, the procurement officer shall identify the respondent(s) whose response(s) are most advantageous to the Judicial Branch Unit. A determination that a respondent's response is most advantageous to the Judicial Branch Unit shall be in writing, state the basis of the determination, and be retained in the procurement file.
12. The respective designee or delegate is authorized to conduct negotiations with the respondent(s) whose response(s) have been determined in the selection process to be most advantageous to the Judicial Branch Unit. The procurement officer shall coordinate any negotiations.
13. Any response to a procurement officer's request for clarification of a response made during negotiations shall be in writing. The procurement officer shall keep a record of all negotiations.
14. Negotiations shall not constitute a contract award nor shall it confer any property rights on the successful respondent. If negotiations are conducted and an agreement is not reached, the Judicial Branch Unit may enter into negotiations with the next highest ranked respondent whose response is susceptible to an award without the need to advise other respondents or repeat the formal solicitation process. The contract shall be awarded in accordance with subsections (R)(1)-(3).
15. More than one response may be determined to be most advantageous to the Judicial Branch Unit and negotiated pursuant to this Code.

K. Sole Source Procurement. A contract may be entered into for procurement without competition if the respective designee of the Judicial Branch Unit determines that no reasonable

alternative sources exist. A written determination of the basis for the sole source procurement shall be included in the contract file.

L. Emergency Procurement. Notwithstanding any other provision of this Code, the respective designee may make or authorize an emergency procurement. Such procurement shall be as competitive as practicable under the circumstances. A written determination of the basis for the procurement and the reason for the selection of the particular contractor shall be included in the contract file.

M. Alternative Means of Procurement. Notwithstanding any other provision of this Code, when compliance with subsections (H)(1) and (I)(1) is impracticable, unnecessary, contrary to the public interest, or requires an open and continuous availability of offerors the respective designee may adopt a written alternative means of procurement for each specific type of purchase for which an alternative means of procurement is used that is as competitive as is practicable.

N. Record of Sole Source and Emergency Contracts. The respective designee or delegate for each Judicial Branch Unit shall maintain a record listing all contracts in excess of one hundred thousand dollars made under subsections (K) or (L) for a minimum of five years. The record shall contain each contractor's name, the amount and type of each contract, and a general description of the materials, services, or construction procured under each contract.

O. Rejection or Cancellation. An Invitation for Bids, Request for Proposals, or Request for Qualification may be canceled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, if it is in the best interest of the Judicial Branch Unit.

P. Determination of Susceptibility for Award and Competitiveness.

1. The procurement officer, following consultation with the evaluation committee, may determine at any time during the evaluation period and before award that an offer is not susceptible for award or not competitive. A written determination shall be placed in the procurement file based on one or more of the following:
 - a. The offer fails to meet one or more of the mandatory requirements of the solicitation;
 - b. The offer fails to concur or comply with any susceptibility criteria identified in the solicitation, including rejection of any contract terms and conditions included in the solicitation; or
 - c. The offer is not competitive because it has no reasonable chance for award when compared on a relative basis with more highly-ranked offers.
2. An offer should be included for further consideration if there is any reason it may be susceptible for award or competitive.

3. The procurement officer shall promptly notify the offeror(s) in writing of the final determination that the offer is not susceptible for award or not competitive, unless the respective designee or delegate determines such notice would compromise the Judicial Branch Unit's ability to negotiate with other offeror(s).

Q. Determination of Responsibility.

1. The procurement officer shall determine at any time during the evaluation period and before award, that an offer is responsible or non-responsible. The procurement officer may permit an offeror to furnish information relating to responsibility called for in the solicitation but not supplied, if the intended offer is evident and submittal of the information is not prejudicial to the Judicial Branch and fair competition. A determination that an offeror is non-responsible shall be in writing and included in the procurement file. A finding of non-responsibility shall not be construed as a violation of the rights of any person. The following factors shall be considered in determining that an offeror is responsible or non-responsible:
 - a. The offeror's financial, business, personnel, or other resources, including subcontractors;
 - b. The offeror's record of performance and integrity;
 - c. Whether the offeror has been debarred or suspended;
 - d. Whether the offeror is legally qualified to contract with the state or the Judicial Branch Unit;
 - e. Whether the offeror promptly supplied all requested information concerning its responsibility; and
 - f. Whether the offeror meets any other responsibility criteria specified in the solicitation.
2. The procurement officer shall promptly notify offeror(s) in writing of the final determination that the offeror is non-responsible, unless the respective designee or delegate determines that such notice would compromise the Judicial Branch Unit's ability to negotiate with the offeror(s). The procurement officer shall file a copy of the determination in the procurement file.
3. Information furnished by a bidder or offeror pursuant to the determination of responsibility shall not be disclosed outside of the office of the procurement officer without prior written consent by the bidder or offeror except to law enforcement agencies or as otherwise required by law or court order.

R. Contract Award.

1. The procurement officer shall prepare an award determination that explains the basis for the award and place the determination in the procurement file.
2. The respective designee or delegate shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the Judicial Branch Unit based on the evaluation factors set forth in the solicitation and the applicable solicitation rules. 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 if a competing offeror located outside this state is not subject to a transaction privilege or use tax of a political subdivision of this state.
3. The procurement officer shall notify all offerors of an award and of the availability of the procurement file.

S. Bid and Performance Security. A Judicial Branch Unit 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 Judicial Branch Unit except as provided for construction contracts in subsection (Z)(1). The requirement for security shall be included in the IFB or RFP.

T. Cost or Pricing Data. For purposes of this Code, and where applicable and not inconsistent with this Code, the provisions of A.R.S. § 41-2543, may be applied.

U. Contract Form.

1. Subject to the limitations of this Code, any type of contract that will promote the best interests of the Judicial Branch Unit may be used, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited.
2. No cost-reimbursement contract shall be used unless the proposed contractor certifies in writing that the contractor's accounting system is adequate to allocate costs, and the Judicial Branch Unit is satisfied as to the validity of the certification.

V. Multi-year Contracts. Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time up to five years, provided the length of any contract exceeding five years and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. For a contract exceeding five years, the respective designee of the Judicial Branch Unit shall determine in writing that such a contract would be advantageous to the Judicial Branch Unit.

W. Multi-term Contracts.

1. Before the use of a multi-term contract the respective designee or delegate shall determine in writing that:

- a. Estimated requirements cover the period of the contract and are reasonable and continuing.
 - b. Such a contract will serve the best interests of the Judicial Branch Unit by encouraging effective competition or otherwise promoting economies in procurement and expenditures.
2. If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, multi-year or multi-term contract shall be canceled. Subject to the availability of funds, costs for materials and services rendered to the date of cancellation, and cancellation costs, may be paid pursuant to the terms of the contract.

X. Inspection, Records and Audit.

1. The Judicial Branch Unit may at reasonable times inspect or cause to be inspected the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract or proposed contract.
2. A Judicial Branch Unit may, at reasonable times and places, audit or cause to be audited the books and records of any person who submits cost or pricing data as provided in this Code to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for five years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the respective designee of the Judicial Branch Unit.
3. A Judicial Branch Unit is entitled to audit, or cause to be audited, the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of five years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the respective designee of the Judicial Branch Unit.
4. All procurement records shall be retained and disposed of by each Judicial Branch Unit in accordance with records retention schedules adopted by the Supreme Court.

Y. Specifications.

1. A Judicial Branch Unit may prepare and use its own specifications and may obtain advice and assistance from personnel of agencies in the development of specifications.
2. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Judicial Branch Unit's needs and shall not be unduly restrictive.

3. All specifications, including those prepared by architects, engineers, consultants and others for public contracts, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Judicial Branch Unit's needs and shall not be unduly restrictive.

Z. Construction and Professional Services.

1. For purposes of this Code and where applicable and not inconsistent with this Code, construction contracts in excess of the amount stated in subsection (AA) are governed by the provisions of A.R.S. §§ 41-2573 through -2577.
2. Except as authorized by subsections (K) and (L), a single contract for architect, engineer, assayer, geologist, landscape architect and land surveying services shall be procured as provided in A.R.S. §§41-2578 and -2581.
3. Contracts for services shall be on the basis of demonstrated competence and qualifications for the types of services required and at fair and reasonable prices.
4. For the purposes of this Code, contracts for reimbursement of costs shall identify what costs are to be reimbursed, and the amount or the method or rate by which the amount shall be computed.
5. A Judicial Branch Unit may use the State Procurement Office or Local Procurement Office to procure construction contracts under subsections (Z)(1)-(4).

AA. Certain Purchases in Excess of \$100,000. Unless otherwise exempted, a procurement having an aggregate amount of more than \$100,000 shall follow the procedures of subsections (H), (I), or (J). For purposes of this Code, "aggregate" shall mean the sum of any existing, current procurement requirements for like materials or services. Nothing in this policy shall preclude the use of sealed bids (RFPs/RFQs) for procurement of \$100,000 or less if desired.

BB. Purchases not Exceeding an Aggregate Amount of \$100,000.

1. Purchases that do not exceed an aggregate dollar amount of \$100,000 are exempt from requirements of subsections (H), (I), and (J), but shall be made according to the following procedures:
 - a. Purchases estimated to cost between \$10,000 and \$100,000 require written quotations from at least three vendors.
 - b. Purchases estimated to cost between \$5,000 and \$10,000 require three written or verbal quotations from at least three vendors.
 - c. Purchases estimated to cost less than \$5,000 shall be made using comparative pricing providing for adequate and reasonable competition.

- d. Quotations, written and verbal, shall be documented and retained with documentation of the purchase.
- e. Vendors may be selected by taking into consideration the price, purchaser's past experience, the vendor's reputation, availability of goods or services, the service level of the vendor, and compatibility of equipment. Other specific criteria may be utilized as necessary given the nature of the specific purchase. Award shall be made to the responsible vendor who submits the quotation that is most advantageous to the Judicial Branch Unit and conforms to the purchase requirements.
- f. Any procurement which does not exceed the aggregate dollar amount of less than \$100,000 shall be restricted, if practicable, to small businesses as defined in this Code. It is declared to be impracticable to procure from a small business under subsections (K), (L), and (M) and when purchases are not expected to exceed \$5,000 or, when it is not the best, most economical, most efficient, or most convenient way to conduct official business.
- g. Procurement requirements shall not be artificially divided or fragmented so as to constitute a purchase under this section and to circumvent the source selection procedures required by subsections (H), (I), or (J) or be artificially combined to circumvent this section.

CC. Request for Information.

- 1. The procurement officer may issue a Request for Information to obtain price, delivery, technical information or capabilities for planning purposes. Adequate public notice as specified in subsection (H)(3) shall be provided.
- 2. Responses to a Request for Information are not offers and cannot be accepted to form a binding contract.
- 3. Information contained in a response to a Request for Information shall be considered confidential until the procurement process is concluded or for two years after the request for information was issued, whichever occurs first.
- 4. There is no required format to be used for a Request for Information.

DD. On-line Bidding and Electronic Transactions Authorized.

- 1. If a procurement officer determines that electronic, on-line bidding is more advantageous than other procurement methods provided in this Code, a procurement officer may use on-line bidding to obtain bids electronically for the purchase of goods, services, construction, data processing, telecommunications or office systems technologies and services.

2. A Judicial Branch Unit using on-line bidding may:

- a. Require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the solicitation.
- b. Prequalify bidders and allow only those bidders who are prequalified to submit bids on line.

3. The Judicial Branch Unit retains its existing authority to determine the criteria that will be used as a basis for making awards.

4. A respective designee may use electronic transactions involving electronic records and signatures in conducting procurements under this Code, provided that the records are created and stored in accordance with ACJA §1-507(E).

EE. Procurement Appeals/Protests Procedures. The respective designee of each Judicial Branch Unit shall adopt a procurement appeals/protest policy and procedure. The policy adopted by the respective designee, at a minimum, shall address the following subjects:

- 1. Protested solicitations and awards;
- 2. Suspension or debarment of contractors; and.
- 3. Breach of contract controversies and contract claims.