

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
)
PROCUREMENT RULES FOR THE) Administrative Order
JUDICIAL BRANCH) No. 2013 - 44
) (Affecting Administrative
) Order No. 2008-40)
_____)

The Procurement Rules for the Judicial Branch were last amended by Administrative Order No. 2008-40. The attached revised judicial branch procurement rules are needed now for use by the Administrative Office of the Courts. These procurement rules require review and consideration of comments within the judicial branch and by the Arizona Judicial Council prior to final adoption for the judicial branch.

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

IT IS ORDERED, that the attached Procurement Rules for the Judicial Branch are adopted for immediate use by the Administrative Office of the Courts.

IT IS FURTHER ORDERED that the Administrative Office of the Courts shall circulate the attached Procurement Rules for the Judicial Branch within the judicial branch and submit the rules to the Arizona Judicial Council for approval no later than the October 2013 meeting and for final adoption for the judicial branch.

Dated this 2nd day of May, 2013.

REBECCA WHITE BERCH
Chief Justice

PROCUREMENT RULES FOR THE JUDICIAL BRANCH

Purpose:

1. The purposes of these rules are to:
 - 1.1 Establish a procurement policy for the Judicial Branch.
 - 1.2 Make as consistent as possible the procurement laws, policies, and practices among the various courts operating under these procurement rules.
 - 1.3 Provide for the fair and equitable treatment of all persons who deal with the procurement system of the Arizona Judicial Branch.
 - 1.4 Provide economies, where possible, in Judicial Branch procurement activities and maximize, to the fullest extent practicable, the purchasing value of public monies.
 - 1.5 Foster effective broad-based competition regarding Judicial Branch procurement activities.
 - 1.6 Provide safeguards for Judicial Branch procurement quality and integrity.

Application and Exceptions:

2. These rules apply to the Arizona Supreme Court, the Arizona Court of Appeals, the Commission on Judicial Conduct, the Commissions on Appellate and Trial Court Appointments, and the Commission on Judicial Performance Review. As used in these rules, the term "Judicial Branch Unit" means any of the above-named courts and commissions.
3. These Rules apply to the Arizona Superior Court, the Justice of the Peace Courts, and the Municipal Courts if adopted by the Presiding Judge of the Superior Court in the county. As used in these rules, the term "Judicial Branch Unit" means any of the above-named courts if adopted by the Presiding Judge of the Superior Court in the county for that court.

If the local court elects to follow the county or city procurement rules/policies/procedures for each such local court, the county or city procurement rules/policies/procedures should be substantially equivalent to the state procurement rules or these Judicial Branch procurement rules.

4. These rules apply to every procurement requiring expenditure of public monies except:

- 4.1 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.
 - 4.2 Contracts or agreements entered into by the Arizona 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.
 - 4.3 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.
 - 4.4 Leases of real property and space leases or rentals.
 - 4.5 Contracts or agreements entered into with the National Center for State Courts or the State Bar of Arizona.
 - 4.6 Agreements in settlement of litigation or threatened litigation.
 - 4.7 Contracts or agreements for preparation, administration, or grading of the Arizona State Bar Examination.
5. A Judicial Branch Unit may enter into intergovernmental agreements for services or jointly exercise any powers common to the contracting parties as prescribed in A.R.S. § 11-952. A Judicial Branch Unit may also enter into interagency agreements.
 6. 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.
 7. 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.
 8. Notwithstanding Rule 21 and Rule 29, 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:
 - 8.1 The price is equal to or less than the contractor's current federal supply contract price.

- 8.2 The contractor has indicated in writing that the contractor is willing to extend the current federal supply contract pricing, terms, and conditions.
- 8.3 The purchase order or work order for materials or services adequately identifies the GSA contract on which the order is based.
- 8.4 It is cost-effective and in the best interests of the Judicial Branch Unit.

Definitions:

- 9. For purposes of these rules the following definitions are adopted:
 - 9.1 "Administrative Director" means the Administrative Director of the Courts.
 - 9.2 "Advantageous" means in the best interest of the Judicial Branch Unit as solely determined by the respective designee or delegate.
 - 9.3 "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.
 - 9.4 "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.
 - 9.5 "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.
 - 9.6 "Commission Chair" means the Chairman of the Commission on Judicial Conduct.
 - 9.7 "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:
 - (i) The routine operation, routine repair, or routine maintenance of existing facilities, structures, buildings, or real property.
 - (ii) The investigation, characterization, restoration, or remediation due to an environmental issue of existing facilities, structures, buildings, or real property.

- 9.8 "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.
- 9.9 "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
- 9.10 "Contractor" means any person or business who has a contract with a Judicial Branch Unit.
- 9.11 "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.
- 9.12 "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.
- 9.13 "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.
- 9.14 "Data" means documented information, regardless of form or characteristic.
- 9.15 "Days" mean calendar days and shall be computed pursuant to A.R.S. § 1-243.
- 9.16 "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.
- 9.17 "Emergency" means compliance with Rules 21 or 29 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.
- 9.18 "Executive Director" means the Executive Director for the Commission on Judicial Conduct.
- 9.19 "General services administration contract" means contracts awarded by the federal General Services Administration.

- 9.20 "Impracticable" means action that would be futile, excessively difficult or expensive, or of little practical value.
- 9.21 "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 Rule 21 - 28.
- 9.22 "Materials" means all property, including equipment, supplies, printing, insurance, and leases of property.
- 9.23 "May" denotes the permissive.
- 9.24 "Multistep 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.
- 9.25 "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 these rules.
- 9.26 "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.
- 9.27 "Presiding Judge" means the presiding judge of the Superior Court in each county.
- 9.28 "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.
- 9.29 "Procurement officer" means any authorized representative acting within the limits of the authorized representative's authority as delegated by the respective designee.
- 9.30 "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.

- 9.31 "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.
- 9.32 "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.
- 9.33 "Request for Proposals" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in Rules 29-41.
- 9.34 "Request for Qualification" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in Rules 42-56.
- 9.35 "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 Superior Court, the Presiding Judges for the Superior Court, the Executive Director for the Commission on Judicial Conduct, and any other person designated by court order.
- 9.36 "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.
- 9.37 "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.
- 9.38 "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.
- 9.39 "Shall" denotes the imperative.
- 9.40 "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.

- 9.41 "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.
- 9.42 "Subcontractor" means a person or business who 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.

Administration:

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

Surplus Property:

- 13. Except as otherwise provided in these rules, the respective designee or delegate for each Judicial Branch Unit shall, in accordance with these rules:
 - 13.1 Establish guidelines for the management of all inventories of materials.
 - 13.2 Sell, trade, or otherwise dispose of surplus materials.
 - 13.3 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:

- 13.3.1 The equipment or materials may be exchanged for an item of equal or greater value, or, if in the process of a procurement under these rules, the Judicial Branch Unit may receive a cost reduction for the trade-in of the equipment or materials.
- 13.3.2 The equipment or materials may be transferred for the beneficial use elsewhere in the Arizona Judiciary or to a tribal court.
- 13.3.3 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.
- 13.3.4 The disposal of computer equipment through a salvage company is a cost effective way to safely destroy secure data efficiently.

Authority and Liability:

- 14. The respective designee for each Judicial Branch Unit may delegate authority for administration of these rules to members of their staff.
 - 14.1 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.
 - 14.2 Members of advisory groups or evaluation committees are not eligible to receive compensation but are eligible for reimbursement of travel related expenses.
 - 14.3 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.
- 15. 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.
- 16. A person who contracts for or purchases any material, or construction in a manner contrary to the requirements of these rules 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).
- 17. 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 these rules is guilty of a Class 4 felony according to A.R.S. § 41-2616(B).

18. 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.
19. 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.
20. 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.

Competitive Sealed Bidding (Invitation for Bids (IFB)):

21. Contracts shall be awarded by competitive sealed bidding, except as provided in these rules.
22. 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.
23. Adequate public notice of the Invitation for Bids 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.
24. Bids shall be opened publicly at the time and place designated in the Invitation for Bids. 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.
25. Bids shall be unconditionally accepted without alteration or correction, except as authorized in Rule 26. 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 Invitation for Bids.

26. 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.
27. 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.
28. 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 Invitation for Bids may be issued requesting the submission of technical offers to be followed by an Invitation for Bids, 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.

Competitive Sealed Proposals (Request for Proposals (RFP)):

29. A contract for materials or services may be entered into by competitive sealed proposals.
30. Proposals shall be solicited through a Request for Proposals.
31. Adequate public notice of the Request for Proposals shall be given pursuant to Rule 23.
32. Proposals shall be opened publicly at the time and place designated in the Request for Proposals. 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 concurs, that content shall remain

confidential. The proposals shall be open for public inspection after a contract is entered into.

Evaluation of RFP's

33. The Request for Proposals shall state in advance the relative importance of price and other evaluation factors. Specific numerical weighting is not required. The Request for Proposals 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.
34. If provided for in the Request for Proposals, 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.
35. Based on recommendations from the evaluation committee, the procurement officer shall determine whether proposals are not susceptible for award. A determination that a proposal is not susceptible for award shall be in writing, state the basis of the determination, and be retained in the procurement file.

Best and Final Offers for RFP's

36. The procurement officer may issue a written request for best and final offers from all offerors whose proposals 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 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.

Most Advantageous Proposal for Award

37. Based on recommendations from 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.

Contract Negotiations for RFPs

38. 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.

39. 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.
40. 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 Rules 67 - 69.
41. 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 these rules.

Request for Qualification (RFQ):

42. Contracts may be entered into by issuance of a Request for Qualification, except this method shall not be used for construction contracts.
43. Qualified respondents shall be solicited through a Request for Qualification.
44. The Request for Qualification 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 a Request for Qualification shall state that the services are being purchased only on an "as needed" basis, and shall further be subject to the provisions of Rules 66 and 82.
45. Adequate public notice of the Request for Qualification shall be given pursuant to Rule 23.
46. Responses to a Request for Qualification shall be opened publicly at the time and place designated in the Request for Qualification. 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.

Evaluation of RFQ's

47. The Request for Qualifications shall state in advance the relative importance of price and other evaluation factors. Specific numerical weighting is not required. The Request for Qualifications 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 Request for Qualification 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.
48. 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.
49. If provided for in the Request for Qualifications, 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.
50. Based on recommendations from 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.

Best and Final Offers for RFQ's

51. 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.

Most Advantageous Response for Award

52. Based on recommendations from 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.

Contract Negotiations for RFQs

53. 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.
54. 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.
55. 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 Rules 67 - 69.
56. More than one response may be determined to be most advantageous to the Judicial Branch Unit and negotiated pursuant to these rules.

Sole Source Procurement:

57. 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.

Emergency Procurement:

58. Notwithstanding any other provision of these rules, 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.

Alternative Means of Procurement:

59. Notwithstanding any other provision of these rules, when compliance with Rules 21 and 29 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.

Record of Sole Source and Emergency Contracts:

60. 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 Rules 57 or 58 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.

Rejection or Cancellation:

61. 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.

Determination of Susceptibility for Award:

62. The procurement officer, upon recommendation of 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 within the competitive range. Written determination shall be placed in the procurement file based on one or more of the following:
 - 62.1 The offer fails to meet one or more of the mandatory requirements of the solicitation;
 - 62.2 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
 - 62.3 The offer is not susceptible for award or is not within the competitive range in comparison other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award or is in the competitive range, the offer should be included for further consideration.
63. The procurement officer shall promptly notify offeror(s) in writing of the final determination that the offer is not susceptible for award or not within the competitive range, unless the respective designee or delegate determines such notice would compromise the Judicial Branch Unit's ability to negotiate with the offeror(s).

Determination of Responsibility:

64. The procurement officer, upon recommendation of the evaluation committee, shall determine at any time during the evaluation period and before award, that an

offer is responsible or non-responsible. 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:

- 64.1 The offeror's financial, business, personnel, or other resources, including subcontractors;
 - 64.2 The offeror's record of performance and integrity;
 - 64.3 Whether the offeror has been debarred or suspended;
 - 64.4 Whether the offeror is legally qualified to contract with the state or the Judicial Branch Unit;
 - 64.5 Whether the offeror promptly supplied all requested information concerning its responsibility; and
 - 64.6 Whether the offeror meets any other responsibility criteria specified in the solicitation.
65. 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.
66. 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.

Contract Award:

67. The procurement officer shall prepare an award determination that explains the basis for the award and place the determination in the procurement file.
68. 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.

69. The procurement officer shall notify all offerors of an award and of the availability of the procurement file.

Bid and Performance Security:

70. 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 Rule 84. The requirement for security shall be included in the Invitation for Bids or Request for Proposals.

Cost or Pricing Data:

71. For purposes of these rules, and where applicable and not inconsistent with these rules, the provisions of A.R.S. § 41-2543, may be applied.

Contract Form:

72. Subject to the limitations of these rules, 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.
73. 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.

Multi-year Contracts:

74. 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.

Multi-term Contracts:

75. Before the use of a multi-term contract the respective designee or delegate shall determine in writing that:
 - 75.1 Estimated requirements cover the period of the contract and are reasonable and continuing.

- 75.2 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.
76. 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.

Inspection, Records and Audit:

77. 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.
78. 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 these rules 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.
79. 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.
80. 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.

Specifications:

81. 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.
82. 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.

83. 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.

Construction and Professional Services:

84. For purposes of these rules and where applicable and not inconsistent with these rules, construction contracts in excess of the amount stated in Rule 89 are governed by the provisions of A.R.S. § 41-2573 through § 41-2577.
85. Architect, engineer, assayer, geologist, landscape architect and land surveying services shall be procured as provided for in these rules.
86. 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.
87. For the purposes of these rules, 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.
88. A Judicial Branch Unit may use the State Procurement Office or Local Procurement Office to procure construction contracts under Rules 84 - 87.

Certain Purchases in Excess of \$100,000:

89. Unless otherwise exempted, a procurement having an aggregate amount of more than \$100,000 shall follow the procedures of Rules 21, 29, or 42. For purposes of procurement rules, "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.

Purchases Not Exceeding an Aggregate Amount of \$100,000:

90. Purchases that do not exceed an aggregate dollar amount of \$100,000 are exempt from requirements of Rules 21, 29, and 42, but shall be made according to the following procedures:
- 90.1 Purchases estimated to cost between \$10,000 and \$100,000 require written quotations from at least three vendors selected by the purchaser.
- 90.2 Purchases estimated to cost between \$5,000 and \$10,000 require three written or verbal quotations from at least three vendors selected by the purchaser.

- 90.3 Purchases estimated to cost less than \$5,000 shall be made using comparative pricing providing for adequate and reasonable competition.
- 90.4 Quotations, written and verbal, shall be documented and retained with documentation of the purchase.
- 90.5 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.
- 90.6 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 these rules. It is declared to be impracticable to procure from a small business under Rules 57, 58, and 59 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.
- 90.7 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 Rules 21, 29, or 42 or be artificially combined to circumvent this section.

Request for Information:

- 91. 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 Rule 23 shall be provided.
 - 91.1 Responses to a Request for Information are not offers and cannot be accepted to form a binding contract.
 - 91.2 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.
 - 91.3 There is no required format to be used for a Request for Information.

Procurement Appeals/Protests Procedures:

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

92.1 Protested solicitations and awards.

92.2 Suspension or debarment of contractors.

92.3 Breach of contract controversies and contract claims.