

IN THE SUPREME COURT OF THE STATE OF ARIZONA

FILED  
DEC 27 1984  
S. ALAN COOK  
CLERK SUPREME COURT  
BY

IN THE MATTER OF: PROMULGATING )  
RULES PRESCRIBING PROCUREMENT )  
POLICIES AND PROCEDURES FOR THE )  
ARIZONA JUDICIAL BRANCH )

ADMINISTRATIVE  
ORDER NO. 84-15

Pursuant to the authority granted this Court by Article VI of the Arizona Constitution and pursuant to A.R.S. § 41-2501.E,

IT IS HEREBY ORDERED:

- 1. That the attached administrative Rules Prescribing Procurement Policies And Procedures For The Arizona Judicial Branch, are adopted.
- 2. That these rules shall become effective from and after December 31, 1984.

DATED this 27<sup>th</sup> day of December, 1984.

FOR THE ARIZONA SUPREME COURT:

WILLIAM A. HOZOHAN, Chief Justice

**RULES PRESCRIBING PROCUREMENT  
POLICIES AND PROCEDURES  
FOR THE JUDICIAL BRANCH**

1. The purposes of these rules are to:
  - a. Establish a procurement policy by the Judicial Branch in accord with the provisions of A.R.S. § 41-2501.E.
  - b. Allow for the continued development of procurement policies and practices for the Arizona Judicial Branch.
  - c. Make as consistent as possible the procurement policies and practices among the various courts of the Arizona Judicial Branch.
  - d. Provide for increased public confidence in the procedures followed in public procurement.
  - e. Provide for the fair and equitable treatment of all persons who deal with the procurement system of the Arizona Judicial Branch.
  - f. Provide economies, where possible, in Judicial Branch procurement activities.
  - g. Foster effective broad-based competition within the free enterprise system regarding Judicial Branch procurement requirements.
  - h. Provide safeguards for the maintenance of a Judicial Branch procurement system of quality and integrity.
  
2. These rules apply only to procurements by the Arizona Judicial Branch initiated from and after December 31, 1984. Procurement policies and procedures of the Judicial Branch in effect prior to the effective date of these rules shall remain in effect until superseded by rules promulgated by the Supreme Court.
  
3. These rules apply to every procurement requiring expenditure of public monies, except that they do not apply to state subsidies, grants, contracts, or similar financial agreements between the Supreme Court 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 Supreme Court.

4. These rules apply to the Arizona Supreme Court, to the Arizona Courts of Appeals, the Commission on Judicial Qualifications, and the Commissions on Appellate and Trial Court Appointments. As used in these rules, the term "Judicial Branch unit" means any of the above-named courts and commissions. These rules are substantially equivalent to the policies and procedures prescribed in Chapter 251, Laws of 1984.
5. These rules shall not apply to contracts 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 Supreme Court and Courts of Appeals. These rules shall not apply to other published and printed material related to the Supreme Court's constitutional rule-making authority, administrative supervision over all the courts of the state, and any other constitutional responsibility.
6. Agreements negotiated by legal counsel representing the Judicial Branch in settlement of litigation or threatened litigation are exempt from the provisions of these rules.
7. For purposes of these rules and where applicable and not inconsistent with these rules, the definitions contained in A.R.S. § 41-2503 may be applied when suitable. In addition, the following definitions are adopted:
  - a. "Respective designee" means the Administrative Director of the Courts for the Supreme Court, including all budgets under its supervision, the Clerks of the Court for the Courts of Appeals, and the Executive Director for the Commission on Judicial Qualifications.
  - b. "Person", in addition to the definition contained in A.R.S. § 41-2503(14), shall also include all courts subject to the Supreme Court's administrative supervision pursuant to Article VI, Section 3 of the Arizona Constitution.
  - c. "Days" mean calendar days and shall be computed pursuant to A.R.S. § 1-243.
  - d. "Legal counsel" means a person licensed as an attorney pursuant to 17A A.R.S. Supreme Court Rules, Rule 27.

- e. "May" denotes the permissive.
  - f. "Shall" denotes the imperative.
  - g. "Chief Justice" means the Chief Justice of the Arizona Supreme Court.
  - h. "Chief Judge" means the Chief Judge of each division (Division One and Two) of the Arizona Court of Appeals.
  - i. "Administrative Director" means the Administrative Director of the Courts.
  - j. "Clerks of the Court" means the Clerk of the Court for each division of the Arizona Courts of Appeals.
  - k. "Executive Director" means the Executive Director for the Commission on Judicial Qualifications.
  - l. "Commission Chairman" means the Chairman of the Commission on Judicial Qualifications.
8. The Administrative Director may adopt other administrative practices and procedures, not inconsistent with these rules, governing the procurement and management of all materials, services and construction to be procured by the Judicial Branch, including the disposal of materials.
9. The respective designee for each Judicial Branch unit shall serve as its central procurement officer.
10. Except as otherwise provided in these rules, the respective designee for each Judicial Branch unit shall, in accordance with these rules:
- a. Procure or supervise all procurements.
  - b. Establish guidelines for the management of all inventories of materials.
  - c. Sell, trade or otherwise dispose of surplus materials.
11. The respective designee for each Judicial Branch unit may delegate authority for administration of these rules to members of their staff.

12. Payment for any services procured under these rules shall not be made unless pursuant to a written contract.
13. For purposes of these rules and where applicable and not inconsistent with these rules, the definitions contained in A.R.S. § 41-2531, Chapter 251, Laws of 1984 may be applied when suitable.
14. Contracts shall be awarded by competitive sealed bidding, except as provided in these rules.
15. For competitive sealed bidding a document shall be prepared entitled "invitation for bid", which shall be made available to prospective bidders. This document shall include a purchase description, time and place for publicly opening the bids, and the evaluation criteria.
16. Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids. Adequate notice may include publication one or more times in a newspaper of general circulation a reasonable time before bid opening. If the invitation for bids is for the procurement of services other than those described in A.R.S. 41-2513 and 41-2578, such notice shall include publication in a newspaper within this state with an accumulated circulation of at least sixty-five thousand subscribers for two publications not less than six nor more than ten days apart. The second publication shall be not less than two weeks before bid opening.
17. 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 bids shall be open for public inspection after a contract is entered into. Where the bidder designates and the Judicial Branch unit concurs, trade secrets or other proprietary data contained in the bid documents shall remain confidential.

18. Bids shall be unconditionally accepted without alteration or correction, except as authorized in rule 19. Bids shall be evaluated based on the requirements set forth in the invitation for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.
19. 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 contracts based on bid mistakes, shall be supported by a written determination made by the respective designee of the Judicial Branch unit.
20. 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 the best meets the needs of the Judicial Branch unit. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the lowest bidder if a competing bidder located outside of this state is not subject to a transaction privilege or use tax of a political subdivision of this state. 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 per cent, the Judicial Branch unit may in situations in which time or economic considerations preclude resolicitation 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.
21. The multistep sealed bidding method may be used if the respective designee of the Judicial Branch unit determines in writing that it is not practical to initially prepare a definitive purchase description which 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

- multistep sealed bidding method shall not be used for construction contracts.
22. If, the respective designee of a Judicial Branch unit determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Judicial Branch unit, a contract may be entered into by competitive sealed proposals. The respective designee may determine that it is either not practicable or not advantageous to the Judicial Branch unit to procure specified types of materials or services by competitive sealed bidding, except that the competitive sealed proposal method shall not be used for construction contracts.
  23. Proposals shall be solicited through a request for proposals.
  24. Adequate public notice of the request for proposals shall be given pursuant to rule 16.
  25. Proposals shall be opened publicly at the time and place designated in the request for proposals. The name of each offeror shall be publicly read and recorded. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall be open for public inspection after a contract is entered into. Where the bidder designates and the Judicial Branch unit concurs, trade secrets or other proprietary data contained in the bid documents shall remain confidential.
  26. To the extent feasible and possible, the request for proposals shall state in advance the relative importance of price and other evaluation factors.
  27. If provided for in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to permit a contractual agreement for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before

finalization of a contract for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

28. The contract shall be entered into with the responsible offeror whose proposal is determined in writing to be the most advantageous to the Judicial Branch unit taking into consideration the evaluation factors set forth in the request for proposals and discussions pursuant to rule 27. No other factors or criteria may be used in the evaluation. 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.
29. Any procurement of each Judicial Branch unit which does not exceed an aggregate dollar amount of five thousand dollars is exempt from the requirements of rules 14 and 22, except that procurements shall be as competitive as is practicable under the circumstances. Procurement requirements shall not be artificially divided or fragmented so as to constitute a purchase under this rule and to circumvent the source selection procedures required by rules 14 and 22. For purposes of these rules, "aggregate" shall mean the sum of any existing, current procurement requirement for like materials or services.
30. A contract may be entered into for procurements without competition, or resolicitation when bids or offers received are not acceptable under these rules, if the respective designee of the Judicial Branch unit, subject to the approval of the Chief Justice, Chief Judge or Commission Chairman, 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.
31. Notwithstanding any other provision of these rules, the respective designee, subject to the approval of the Chief Justice, Chief Judge, or Commission Chairman, may make or authorize emergency procurements if there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with rules 14 or 22 impracticable, unnecessary or contrary to the public interest, except that such emergency



procurements shall be as competitive as is practicable under the circumstances. A written determination of the basis for the emergency and the reason for the selection of the particular contractor shall be included in the contract file.

32. An invitation for bids or request for proposals may be cancelled 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 interests of the Judicial Branch unit.
33. A written determination of nonresponsibility of a bidder or offeror may include, but not be limited to, the unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility. A finding of non-responsibility shall constitute grounds for rejection of the bid or offer. A finding of nonresponsibility shall not be construed as a violation of the rights of any person.
34. Information furnished by a bidder or offeror pursuant to these rules shall not be disclosed outside of the Judicial Branch except to law enforcement agencies without prior written consent by the bidder or offeror.
35. 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. The requirement for security shall be included in the invitation for bids or request for proposals.
36. For purposes of these rules, and where applicable and not inconsistent with these rules, the provisions of A.R.S. § 41-2543, Chapter 251, Laws of 1984, may be applied.
37. Subject to the limitations of these rules, any type of contract which will promote the best interests of the Judicial Branch may be used, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only if a determination is made in writing that such contract is likely to be less costly to the Judicial Branch than

any other type or that it is impracticable to obtain the procurement required except under such a contract.

38. 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.
39. Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time exceeding one year, provided the length of any contract exceeding one year 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. The respective designee of the Judicial Branch unit shall determine in writing that such a contract would be advantageous to the Judicial Branch. Contracts exceeding one year shall be subject to the provisions of rules 40 and 41.
40. Contracts having a duration exceeding one year shall only be utilized if the respective designee of the Judicial Branch unit determines in writing that:
  - a. Requirements giving rise to the contract are reasonable and continuing.
  - b. Such a contract, in their best judgment, will serve the best interests of the Judicial Branch unit by encouraging effective competition or otherwise promoting economies in procurement and expenditures.
41. If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled. Subject to the availability of funds, costs for materials and services rendered up to the date of cancellation and cancellation costs may be paid, pursuant to the terms of the contract.
42. 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 which is related to the performance of any contract or proposed contract.

43. 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 three 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.
44. 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 three years from the date of final payment under the prime contract and by the subcontractor for a period of three 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.
45. All procurement records shall be retained and disposed of by each Judicial Branch unit in accordance with records retention schedules adopted by the Administrative Director of the Courts.
46. The respective designee for each Judicial Branch unit shall maintain a record listing all contracts in excess of thirty thousand dollars made under rules 30 or 31 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.
47. For purposes of these rules, "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.

48. 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.
49. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Judicial Branch's needs and shall not be unduly restrictive.
50. 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's needs and shall not be unduly restrictive.
51. For purposes of these rules and where applicable and not inconsistent with these rules, the provisions of A.R.S. §41-2571 through A.R.S. § 41-2577 of Chapter 251, Laws of 1984, may be applied when suitable.
52. Architect, engineer, assayer, geologist, landscape architect and land surveying services shall be procured as provided for in these rules.
53. 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.
54. 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.
55. A Judicial Branch unit may enter into intergovernmental agreements for purposes of intergovernmental procurement. For purposes of these rules and where applicable and not inconsistent with these rules, the provisions of A.R.S. §§ 41-2641 through 41-2645 may be applied when suitable.