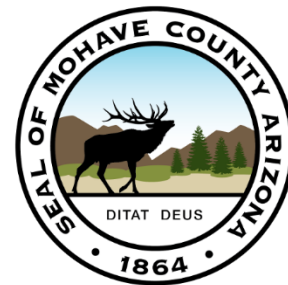


MOHAVE COUNTY PROCUREMENT CODE



ARTICLE I. GENERAL PROVISIONS

Sec. 1. Applicability

Art. I, Sec. 1(1) This Procurement Code prescribes policies and procedures for the acquisition of supplies and services, including, construction, research and development, architect-engineer and commercial items. This code applies to expenditure of public funds irrespective of funding source, including State and Federal assistance monies, except that nothing in this Code shall prevent Mohave County from complying with terms and conditions of any grant, gift, bequest, cooperative agreement, or Federal or State guideline.

Art. I, Sec. 1(2) The provisions of this Code are not applicable to contracts for professional witnesses or experts if the purpose of such contracts is to provide for services or testimony relating to an existing or probable litigation in which this County is or may become a party or to contracts for special investigative services for law enforcement purposes.

Art. I, Sec. 1(3) This Code does not apply to the procurement of services related to land titles, appraisals, real property acquisitions, relocation, or property management authorized under Arizona Revised Statutes Titles 11, 28, or 48.

Art. I, Sec. 1(4) Agreements negotiated by legal counsel representing Mohave County in settlement of existing or probable litigation are exempt from the provisions of this code.

Art. I, Sec. 1(5) The provisions of this Code are not applicable to the purchase of water, gas, or electric utilities.

Art. I, Sec. 1(6) The award of financial participation agreements, master operating agreements, memoranda of understanding, and Community Development Block Grants are exempt from this Code. Such contracts shall be awarded in accordance with applicable County policy.

Sec. 2. Definitions

In this Code, unless the context otherwise requires:

Art. I, Sec. 2(1) "Bidder prequalification" means determining that a prospective bidder or offeror satisfies the criteria for being included on the bidder's list.

Art. I, Sec. 2(2) "Bid sample" means an item furnished by a bidder to show the characteristics of the item offered in the bid.

Art. I, Sec. 2(3) "Brand name or equal specification" means a specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance and other characteristics needed to meet County requirements and that provides for the submission of equivalent products.

Art. I, Sec. 2(4) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.

Art. I, Sec. 2(5) "Change Order" means a written order signed by the Procurement Director or designee which directs the contractor to make changes that the contract authorizes the Procurement Director to order with or without the consent of the contractor, as applicable.

Art. I, Sec. 2(6) "Construction" means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings, or real property.

Art. I, Sec. 2(7) "Construction services" means either of the following for construction-manager-at-risk, design-build, and job-order-contracting project delivery methods:

(a) Construction, excluding services through the construction-manager-at-risk or job-order-contracting project delivery methods.

(b) A combination of construction and, as elected by the County, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build, or job-order-contracting in Article V, Sec. 1.

Art. I, Sec. 2(8) "Contract" means all types of County agreements, regardless of what they may be called, for the procurement of materials, services, construction, or disposal of materials.

Art. I, Sec. 2(9) "Contract amendment" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties of the contract.

Art. I, Sec. 2(10) "Contractor" means any person who has a contract with the County.

Art. I, Sec. 2(11) "Cost data" means information concerning the actual or estimated cost of labor, materials, overhead and cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.

Art. I, Sec. 2(12) "County Procurement Director" means the Chief Procurement Official and administrator of the Mohave County Department of Procurement .

Art. I, Sec. 2(13) "Days", unless otherwise specified, means consecutive calendar days and shall be computed pursuant to A.R.S. §1-243.

Art. I, Sec. 2(14) "Department" means the Mohave County Department of Procurement.

Art. I, Sec. 2(15) "Designee" means a duly authorized representative of the County Manager, Procurement Director, or Department Head.

Art. I, Sec. 2(16) "Disposal of material" means sale of surplus, unclaimed and seized property by public auction, electronic auction, competitive sealed bidding, small purchase procedures or other appropriate method designated by this Code.

Art. I, Sec. 2(17) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Art. I, Sec. 2(18) "Grant" means the furnishing by this County of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of materials, services or construction. A contract resulting from such an agreement is not a grant but a procurement contract.

Art. I, Sec. 2(19) "Materials" means all property, including but not limited to, equipment, supplies, printing, insurance and buildings but does not include land, a permanent interest in land or leases of real property.

Art. I, Sec. 2(20) "Procurement Officer" means any person duly authorized to enter into and administer contracts and make written recommendations and reports with respect to the contracts. Procurement Officer also includes an authorized representative acting within the limits of the officer's authority.

Art. I, Sec. 2(21) "Procurement Supervisor" means any person duly authorized to enter into and administer contracts and make written determinations with respect to the contracts. Procurement Supervisor also includes an authorized representative acting within the limits of the supervisor's authority.

Art. I, Sec. 2(22) "Public Notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods may include electronic mailing lists and a website maintained for that purpose.

Art. I, Sec. 2(23) "Services" means the furnishing of labor, time or effort by a contractor, consultant, subcontractor, or subconsultant which does not involve the delivery of a specific end product other than required design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of services includes, but is not limited to, consulting, personal, professional, legal counsel, auditing, technical, professional design, construction and purchase-of-client services.

Art. I, Sec. 2(24) "Subcontractor or subconsultant" means a person who contracts to perform work or render service to a contractor or consultant as defined by this section or to another subcontractor or subconsultant as a part of a contract with the County.

Art. I, Sec. 2(25) "Written or In Writing" means the product of any method for forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Art. I, Sec. 2(26) "Written Determination" means a written decision resolving a question or controversy, finalizing a position, or making a final determination, within the limits of authority under this Code.

Art. I, Sec. 2(27) "Using department" means any organizational unit of the County, which utilizes any materials, services or construction procured under this Code.

Sec. 3. Supplementary General Principles of Law Applicable

Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake or other applicable laws supplement the provisions of this Code.

Sec. 4. Requirement of Good Faith

This Code requires all parties involved in the negotiation, performance, or administration of County contracts to act in good faith.

Sec. 5. Confidential Information

Art. I, Sec. 5(1) It is the public policy of Mohave County to be transparent in its interactions with the public, and to provide public access to the records in its possession. County transactions are presumed to be public records, except for those records exempt from public disclosure by state or federal law. Further, Mohave County reserves the right to refuse disclosure of records that are confidential by statute, when the public interest in disclosure is outweighed by privacy concerns, or when the County's best interest outweighs the right to disclosure.

Art. I, Sec. 5(2) Confidential information shall be designated as follows:

(a) If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld from public disclosure, the person shall submit a statement to the Procurement Officer requesting to designate the submission as confidential information. The statement shall explain the basis for the person's belief that the submission is confidential and should be withheld from public disclosure. The statement shall also specify which information, if not all of the material, should be designated as confidential. The person should make reasonable efforts to separate confidential from non-confidential information in the submission.

(b) The County Procurement Director shall make a Written Determination, within a reasonable time, whether the person's request to designate the submission as confidential information shall be approved.

(c) If the County Procurement Director rejects the person's request to designate the submission as confidential information, the County Procurement Director shall inform the person in writing of such determination.

Sec. 6. Written Determinations

Written Determinations required by this Code shall specify the reasons for the determination. The County Procurement Director is authorized to prescribe methods and operational procedures to be used in preparing Written Determinations. Each Written Determination shall be filed in the applicable Solicitation or Contract file, and the timing of such filing shall be determined by the Procurement Director.

Sec. 7. General Contracting Requirements

Art. I, Sec. 7(1) Unless specifically delegated by the Board of Supervisors or authorized by this Code, all Contracts must be approved by the Board of Supervisors.

Art I, Sec. 7(2) Payment for all materials, services, or construction shall not be made unless pursuant to a written Contract procured under this Code.

Art I, Sec. 7(3) The Procurement Director shall not incur an obligation on behalf of Mohave County if sufficient funds are not available.

Art. I, Sec. 7(4) Procurement requirements shall not be artificially divided or fragmented to circumvent source selection procedures or to justify the selection of products or services.

ARTICLE II. PROCUREMENT DIRECTOR

Sec. 1. Centralized Authority of the Procurement Director

Art. II, Sec. 1(1) The Procurement Director may adopt operational procedures, consistent with this Code, governing the procurement and management of all materials, services, and construction to be procured by this County and the disposal of materials.

Art. II, Sec. 1(2) Except as otherwise provided herein, the Procurement Director shall:

- (a) Serve as the Chief Procurement Official exclusively supervising and managing the County's procurement process and ensuring compliance with this Code.
- (b) Procure or supervise the procurement of all materials, services and construction needed by this County.
- (c) Award or recommend the award of all County Contracts in accordance with Art. III, Sec.21 (Contract Form and Execution).
- (d) Establish guidelines for the management of all inventories of materials belonging to this County.
- (e) Sell, trade, or otherwise dispose of surplus materials belonging to this County in accordance with A.R.S. §11-251(9).
- (f) Prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services and construction required by this County.
- (f) Establish and maintain programs for the inspection, testing and acceptance of materials, services and construction.
- (g) Prepare and issue solicitations, including electronic solicitations, and ensure that the selection process is in compliance with this Code.
- (h) Conduct procurement for all County departments except those conducted by departments to whom the Procurement Director has delegated procurement authority, or as otherwise permitted by this Code.
- (i) Authorize emergency, sole source, and competition impracticable procurements as specified in this Code.

Sec. 2. Authority to Delegate

Art. II, Sec. 2(1) The Procurement Director may delegate procurement authority to designees or to any department or official of the County.

Art. II, Sec. 2(2) The Procurement Director shall consider the following factors in making the decision to delegate or rescind procurement authority:

- (a) The procurement expertise, specialized knowledge and past experience of the Procurement Supervisor or other designated official;
- (b) The impact of the delegation on Procurement efficiency and effectiveness; and
- (c) The abilities and resources of the Procurement Supervisor or other designated official.

Art. II, Sec. 2(3) The delegation or modification of any authority shall require a written determination, and shall specify the scope and type of authority delegated or modified, any limits or restrictions on the exercise of the delegated authority, whether the authority may be further delegated, and the duration of the delegation.

Art. II, Sec. 2(4) The delegated authority may be suspended, revoked, or modified by the Procurement Director at any time.

Art. II, Sec 2(5) The Procurement Supervisor or other designated official receiving a delegation of authority shall exercise that authority according to the Mohave County Procurement Code, applicable Mohave County policies and procedures, and the terms of the delegation.

ARTICLE III. SOURCE SELECTION & CONTRACT FORMATION

Sec. 1. Definitions

In this article, unless the context otherwise requires:

Art. III, Sec. 1(1) "Best Value" means an offer, which after an evaluation based on objective criteria, is determined to provide the best overall value to the County.

Art. III, Sec. 1(2) "Discussions" means communication with an offeror for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal clarification of any offer to assure full understanding of, and responsiveness to, solicitation requirements or to establish the competency or financial stability of any offeror.

Art. III, Sec. 1(3) "Invitation for bid" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in Article III, Section 3.

Art. III, Sec. 1(4) "Minor informality" means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of such mistakes does not prejudice other bidders or offerors.

Art. III, Sec. 1(5) "Negotiations" means an exchange of information or any form of negotiation during which the offeror and the County may alter or otherwise change the conditions, terms, and price, unless prohibited, of the proposed contract. Discussions may be conducted in connection with competitive sealed proposals, requests for qualifications, small purchases, sole source procurements, emergency procurements, and contract amendments.

Art. III, Sec. 1(6) "Proposal revision" means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Procurement Officer, as the result of negotiation.

Art. III, Sec. 1(7) "Request for proposals" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in Article III, Section 4 (Competitive Sealed Proposals).

Art. III, Sec. 1(8) "Request for qualifications" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting responses from qualified respondents in accordance with Article V.

Art. III, Sec. 1(9) "Responsible bidder, offeror, or respondent" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

Art. III, Sec. 1(10) "Responsive bidder, offeror, or respondent" means a person who submits a bid, proposal or response which conforms in all material respects to the invitation for bids, request for proposals, or request for qualifications.

Art. III, Sec. 1(11) "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for qualifications, a request for quotations, or any other invitation or request by which the County invites a person to participate in a procurement.

Sec. 2. Methods of Source Selection

All contracts of the County shall be awarded by competitive sealed bidding except as otherwise provided in Article III, Sec. 4 (Competitive Sealed Proposals); Art. III, Sec. 5 (Contracting for Specialized Legal Services); Article III, Sec. 6 (Small Purchases); Article III, Sec. 7 (Sole Source Procurement); Article III, Sec. 8 (Competition Impracticable); Article III, Sec. 9 (Emergency Procurements); Article V, Sec. 3 (Procurement of Professional Design Services); Article V, Sec. 4 (Procurement of Construction Services); and Article V, Sec. 6 (Direct Selection of Pre-Qualified Technical Registrants) of this Code.

Sec. 3. Competitive Sealed Bidding

Art. III, Sec. 3(1) Invitation for Bids. An invitation for bids shall be issued and shall include specifications, any applicable evaluation criteria, and all contractual terms and conditions specifically applicable to the procurement. Standard contractual terms and conditions may be included within the solicitation document or incorporated by reference.

Art. III, Sec. 3(2) Public Notice. Adequate public notice of the invitation for bids shall be given not less than twenty-one (21) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Procurement Director. The public notice shall state the place, date, and time of bid opening. Notice of the invitation for bids shall be posted on the procurement website and a copy of the invitation for bids shall be available for public inspection.

Art. III, Sec. 3(3) Late Bids. A bid is late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. The department's clock is the governing clock. A late bid shall be rejected. A late bid shall not be opened; except for, if necessary, identification purposes. Such bids shall be returned to the bidder. Bidders submitting bids that are rejected as late shall be so notified.

Art. III, Sec. 3(4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of

each bid and such other relevant information as the Procurement Director deems appropriate, together with the name of each bidder shall be recorded. This record shall be open to public inspection. In the event no attendees are present for bid opening, the sealed bids shall be opened by the Procurement Department and a "bid" or "no bid" may be recorded on the tabulation sheet. The bid may then be given to the appropriate person for recording. The attendance sheets will indicate that there were no attendees present. Unless otherwise determined by the Procurement Director, the bids shall not be opened for public inspection until after a contract is awarded. After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Article I, Sec. 5.

Art. III, Sec. 3(5) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.

Art. III, Sec. 3(6) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate.

(a) Prior to Bid Opening. Mistakes discovered prior to bid opening may be modified or withdrawn by written notice received in the department prior to the time set for bid opening.

(b) After Bid Opening. After bid opening corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted.

(c) Withdrawal of Bid After Bid Opening. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- i. the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- ii. the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. 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 Procurement Director.

Art. III, Sec. 3(7) Contract Award

(a) General. The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.

(b) Contract Award Based on Best Value. Notwithstanding Art. III, Sec. 3(7)(a), the contract may be awarded on best value analysis provided that the criteria for analysis was included in the invitation for bids in accordance with Art. III, Sec. 3(1). The contract shall be awarded by appropriate written notice to the response bidder determined to be the best value to the County and whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.

(c) Consideration of Taxes in Competitive Sealed Bidding. In evaluating the bids, except for the procurement of construction, and for purposes of determining the low bidder, the Procurement Director shall include the amount of applicable transaction privilege tax. The amount of a County's transaction privilege tax shall not be included in the evaluation except in those instances in which the award is between a Mohave County area bidder and an Arizona-based, non-Mohave County area bidder. In this event, the applicable County business privilege tax shall be included in the non-Mohave County area bidder's price for evaluation purposes only to determine the lowest bidder.

(d) Exceeding Available Funds. In the event the low responsive and responsible bid for a construction project exceeds available funds and such bid does not exceed such funds by more than five percent, the Procurement Director is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

(e) Public Record. After the County issues a notice of intent to award or upon final contract execution, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Art. I, Sec. 5 (Confidential Information).

Art. III, Sec. 3(8) Low Tie Bids. If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by random selection in a manner prescribed by the Procurement Director.

Sec. 4. Competitive Sealed Proposals

Art. III, Sec. 4(1) Conditions for Use. Unless otherwise prohibited, a contract may be entered into by use of the competitive sealed proposals method when the use of competitive sealed bidding is either not practicable or not advantageous to the County.

Art. III, Sec. 4(2) Request for Proposals. Competitive sealed proposals shall be solicited through a request for proposals.

Art. III, Sec. 4(3) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Article III, Sec. 3(2) (Competitive Sealed Bidding, Public Notice).

Art. III, Sec. 4(4) Late Proposals. A proposal is late if it is received at the location designated in the request for proposals after the time and date set for receipt of proposals. Late proposals shall be rejected in accordance with Art. III, Sec. 3(3).

Art. III, Sec. 4(5) Receipt of Proposals. Proposals shall not be opened publicly. No proposals shall be handled as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be open for public inspection after a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with Article I, Sec. 5 (Confidential Information).

Art. III, Sec. 4(6) Evaluation of Proposals.

(a) Evaluation Criteria. The request for proposals shall state the criteria to be used in the evaluation of the proposals and may include their relative importance. Specific numerical weighting is not required.

(b) Selection Committee. The Procurement Director or designated representative shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

Art. III, Sec. 4(7) Discussion with Offerors. Discussions may be conducted with responsible offerors.

Art. III, Sec. 4(8) Negotiations with Responsible Offerors and Revisions to Proposals. Negotiations may be conducted with responsible offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(a) Concurrent Negotiations. Negotiations may be conducted concurrently with responsible offerors for the purpose of determining source selection and/or contract award.

(b) Exclusive Negotiations. Exclusive negotiations may be conducted with the responsible offeror whose proposal is determined in the selection process to be most advantageous to the County. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the County may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.

Art. III, Sec. 4(9) Contract Award. Contract award shall be made to the responsible offeror whose proposal is determined in writing to be the best value to the County taking into consideration price and the other evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

Sec. 5. Contracting for Specialized Legal Services

Art. III, Sec. 5(1) Authority. All contracts for legal services shall be executed by the Procurement Director except as otherwise provided by law. Legal services above threshold amount set in A.R.S. § 41-2535(A) shall be subject to formal approval by the Mohave County Board of Supervisors.

Art. III, Sec. 5(2) Conditions for Use. Except as provided under Article III, Sec. 7 (Sole Source Procurement); Article III, Sec. 8 (Competition Impracticable); or Article III, Sec. 8 (Emergency Procurements); specialized legal services expected to exceed the threshold amount set in A.R.S. § 41-2535(A) during a fiscal year shall be procured in accordance with Article III, Sec. 4 (Competitive Sealed Proposals) of this Code. Specialized legal services expected not to exceed the threshold amount set in A.R.S. § 41-2535(A) during a fiscal year shall be procured in accordance with written policies approved by the Procurement Director, in consultation with the County Manager. Any operational procedure developed shall be based upon the exercise of sound business judgment and the consideration of quality of services.

Sec. 6. Small Purchases

Art. III, Sec. 6(1) Small Purchase Threshold. A.R.S. § 41-2501(C) allows Mohave County to adopt all or any part of Chapter 23 (Arizona Procurement Code) of Title 41. Pursuant to A.R.S. § 11-254.01 and A.R.S. § 41-2501(C), Mohave County hereby adopts the threshold specified in A.R.S. § 41-2535(A) for the purchase of supplies, materials, equipment and contractual services, except professional services.

Art. III, Sec. 6(2) Any procurement not exceeding the threshold amount set in A.R.S. § 41-2535(A) shall be subject to small purchase procedures as follows:

(a) General. The Procurement Director may adopt operational procedures for making small purchases consistent with this Section.

(b) Micro Purchases: Any procurement not exceeding \$10,000 may be made by the Procurement Director, designee or using department by obtaining as much competition as is practicable, and with the use of good judgment for the responsible use of county funds.

(c) Small Purchases: Any purchase in excess of \$10,000 but less than the threshold amount set in A.R.S. § 41-2535(A),

- i. The Procurement Director, designee or using department shall solicit written quotations from no less than three businesses.
- ii. The person conducting the solicitation shall document, in writing, the efforts made to comply with this section. Such documentation shall include the names of the businesses submitting quotations, the date and amount of each quotation, and the department's rationale for selecting the business. This documentation shall be maintained as a public record.
- iii. Award shall be made to the responsible bidder submitting the quotation, providing the best value to the County and conforming in all material respects to the solicitation.

Sec. 7. Sole Source Procurement

Art. III, Sec. 7(1) A contract may be awarded without competition when there is only one source for the required material, service, or construction item. Sole source procurement shall be avoided, except when no reasonable alternative sources exist.

Art. III, Sec. 7(2) The Procurement Director may require the using department to submit documentation to justify the request for a sole source determination.

Art. III, Sec. 7(3) A record of sole source procurements shall be maintained as a public record.

Art. III, Sec. 7(4) The procedure for awarding a sole source procurement shall be as follows:

(a) General. The Procurement Director may adopt operational procedures for making sole source determinations consistent with this Section.

(b) For a Sole Source Procurement exceeding the threshold amount set in A.R.S. § 41-2535(A), the Board of Supervisors may award a contract for material, service, or construction without competition based on a written determination of the Procurement Director that there is only one source for the required material, service, or construction. The Board of Supervisors may require that negotiations are conducted as to price, delivery, and terms.

(c) For a Sole Source Procurement not exceeding the threshold amount set in A.R.S. § 41-2535(A), the Procurement Director may award a contract for material, service, or construction without competition based on a written determination of the Procurement Director that there is only one source for the required material, service, or construction.

Sec. 8. Competition Impracticable

Art. III, Sec. 8(1) A contract may be awarded without competition when it is determined that competition for the procurement is impracticable.

Art. III, Sec. 8(2) The Procurement Director may require the using department to submit documentation to justify the request for a competition impracticable determination

Art. III, Sec 8(3) A record of competition impracticable procurements shall be maintained as a public record.

Art. III, Sec 8(4) The procedure for award when competition is impracticable is as follows:

(a) General. The Procurement Director may adopt operational procedures for making competition impracticable determinations consistent with this Section.

(b) For a Procurement exceeding the threshold amount set in A.R.S. § 41-2535(A), the Board of Supervisors may award a contract for material, service, or construction without competition, and even though more than one vendor is available, upon a written determination and recommendation submitted by the Procurement Director.

(c) For a Procurement not exceeding the threshold amount set in A.R.S. § 41-2535(A), the Procurement Director may award a contract for material, service, or construction without competition, and even though more than one vendor is available, upon recommendation of the Procurement Officer in compliance with the requirements of this section and based on a written determination of the Procurement Director.

(d) Prior to issuing a written determination that competition is impracticable, the Procurement Director must find, by clear and convincing evidence and based upon the totality of the circumstances, competition for the procurement is impractical.

The Procurement Director shall consider the following criteria when evaluating the totality of the circumstance:

- i. The competition for the material, service, or construction is impractical because of standardization, warranty, or excessive cost to the county;
- ii. The circumstances for the procurement are so unusual or unique that competition would be impractical;
- iii. The procurement of the material, service, or construction without competition is advantageous to Mohave County.

Sec. 9. Emergency Procurements

Art. III, Sec. 9(1) Notwithstanding any other provisions of this Code, the Procurement Director, upon consultation with the County Manager, may make or authorize others to make emergency procurements of materials, services, or construction when there exists a threat to public health, welfare, property or safety or if a situation exists which makes compliance with Article III, Sec. 3 (Competitive Sealed Bidding); Article III, Sec. 4 (Competitive Sealed Proposals); Art. III, Sec. 5 (Contracting for Specialized Legal Services); Article III, Sec. 6 (Small Purchases); Article III, Sec. 7 (Sole Source Procurement); Article III, Sec. 8 (Competition Impracticable); Article V, Sec. 3 (Procurement of Professional Design Services); Article V, Sec. 4 (Procurement of Construction Services); or Article V, Sec. 6 (Direct Selection of Pre-Qualified Technical Registrants) contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances.

Art. III, Sec. 9(2) Emergency procurements shall be limited to those materials, services, or construction necessary to satisfy the emergency need.

Art. III, Sec. 9(3) A written determination of the basis for the emergency and for the selection of the particular supplier shall be included in the contract file.

Art. III, Sec. 9(4) Emergency Procurement determinations made in consultation with the County Manager and exceeding the threshold amount set in A.R.S. § 41-2535(A) are subject to formal ratification of the Board of Supervisors.

Art. III, Sec. 9(5) Emergency conditions may arise from, but are not limited to, floods, epidemics, riots or equipment failures. An emergency condition creates an immediate and serious need for materials, services or construction that cannot be met through normal procurement methods and that seriously threatens the functioning of Mohave County Government, the preservation of property or the public health or safety.

Sec. 10. Cancellation of Solicitations

Art. III, Sec. 10(1) Cancellation of Solicitation. An invitation for bids, a request for proposals, a request for qualifications or other solicitation may be cancelled, or any or all bids, proposals or statement of qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the County. Each solicitation issued by the County shall state that the solicitation may be cancelled and that any bid, proposal or statement of qualification may be rejected in whole or in part when in the best interests of the County.

Art. III, Sec. 10(2) Prior to Opening.

(a) As used in this Section, "opening" means the date and time set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals.

(b) Prior to opening, a solicitation may be cancelled in whole or in part when the Procurement Director determines in writing that such action is in the County's best interest for reasons including but not limited to:

- i. The County no longer requires the materials, services, or construction;
or
- ii. The County no longer can reasonably expect to fund the procurement;
or
- iii. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(c) When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all persons solicited.

(d) The notice of cancellation shall:

- i. Identify the solicitation;
- ii. Briefly explain the reason for cancellation; and
- iii. Where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar materials, services, or construction.

Art. III, Sec. 10(3) After Opening.

(a) After opening but prior to award, all bids, proposals or requests for qualifications may be rejected in whole or in part when the Procurement Director determines in

writing that such action is in the County's best interest for reasons including but not limited to:

- i. The materials, services, or construction being procured are no longer required; or
- ii. Ambiguous or otherwise inadequate specifications or scopes of work were part of the solicitation; or
- iii. The solicitation did not provide for consideration of all factors of significance to the County; or
- iv. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or
- v. All otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices; or
- vi. There is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(b) A notice of rejection shall be sent to all persons that submitted bids, statements of qualifications or proposals.

(c) If all bids, proposals, or statements of qualifications are rejected, all bids, proposals or statements received shall remain, to the extent possible, confidential.

Art. III, Sec. 10(4) Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 11. Rejection of Individual Offers

Art. III, Sec. 11(1) An individual bid, proposal, statement of qualifications, or quotation may be rejected if:

- (a) The offeror is determined to be nonresponsible pursuant to Article III, Sec. 12 (Responsibility of Bidders and Offerors);
- (b) The offer is determined to be not responsive as defined in Article III, Sec. 1(10).
- (c) The proposed price, unless prohibited, is unreasonable; or
- (d) It is otherwise not advantageous to the County

Art. III, Sec 11(2) Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

Sec. 12. Responsibility of Bidders and Offerors

Art. III, Sec. 12(1) Determination of Non-responsibility. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written finding of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Procurement Officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of non-responsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

Art. III, Sec. 12(2) Right of Nondisclosure. Confidential information furnished by a bidder, offeror or respondent pursuant to this section shall not be disclosed by the County outside of the Procurement Department, or using department, without prior written consent by the bidder, offeror or respondent.

Art. III, Sec. 12(3) Factors to be considered in determining if a prospective contractor is responsible include:

- (a) The proposed contractor's financial, physical, personnel or other resources, including subcontracts;
- (b) The proposed contractor's record of performance and integrity;
- (c) Whether the proposed contractor is qualified legally to contract with the County; and
- (d) Whether the proposed contractor supplied all necessary information concerning its responsibility.

Art. III, Sec. 12(4) The Procurement Director may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

Sec. 13. Bid and Contract Security, Material or Service Contracts

The Procurement Director may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the Procurement Director shall consider the nature of the performance and the need for future protection to the County. The requirement for security must be included in the solicitation. Failure to submit security in the amount and type of security required may result in the rejection of the bid, statement of qualifications or proposal.

Sec. 14. Types of Contracts

Subject to the limitations of this Code, any type of contract which will promote the best interests of this County may be used.

Sec. 15. Approval of Accounting System

The Procurement Director may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract.

Sec. 16. Multi-year Contracts

Art. III, Sec. 16(1) Unless otherwise provided by law, a contract for materials or services may be entered into for any period of time deemed to be in the best interest of this County, if the term of the contract and conditions of renewal or extension, if any, are included in the contract and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

Art. III, Sec. 16(2) Unless otherwise provided by law, a contract for technology software may be entered into for a period not to exceed five (5) years if the term of the contract and conditions of renewal or extension, if any, are included in the contract and monies are available for the initial term at the time of contracting. Payment and performance obligations for succeeding renewal periods are subject to the availability and appropriation of monies.

(a) General. The Procurement Director may adopt operational procedures for making technology software purchases consistent with this Section.

(b) Contracts for technology software shall be procured in accordance with written operational procedures approved by the Procurement Director, in consultation with the County Manager. Any procedure developed shall be based upon the exercise of sound business judgment and the consideration of operational efficiencies.

Art. III, Sec 16(3) Prior to use of a multi-term contract, it shall be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing;

(b) the contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in County procurement.

Art. III, Sec. 16(4) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract may be cancelled by the County and the contractor shall be reimbursed for the reasonable value

of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

Sec. 17. Right to Inspect

The County may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant, or any subcontractor or subconsultant that is related to the performance of any contract awarded or to be awarded by this County.

Sec. 18. Right to Audit Records

Art. III, Sec. 18(1) The County may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in Article VII of 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 three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the Procurement Director.

Art. III, Sec. 18(2) The County is entitled to audit the books and records of a contractor, consultant or any subcontractor or subconsultant 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 (3) years from the date of final payment under the prime contractor or consultant, and by the subcontractor or subconsultant for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Procurement Director.

Sec. 19. Reporting of Anticompetitive Practices

If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Procurement Director and the County Attorney. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the Procurement Director.

Sec. 20. Prospective Vendors Lists

Art. III, Sec. 20(1) The Procurement Director shall maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a County contract.

Art. III, Sec. 20(2) Persons desiring to be included on the prospective vendors list may notify the Procurement Department or may register with the department in-person. The

department may remove a person from the prospective vendors list if it is determined that inclusion is not advantageous to the County.

Art. III, Sec. 20(3) It shall be the vendor's sole responsibility to ensure that vendor registration information is current and active.

Sec. 21. Contract Form and Execution

All contracts entered into under this Code shall be executed in the name of the County by the Procurement Director or if above the threshold amount set in A.R.S. § 41-2535(A) by the Mohave County Board of Supervisors.

Sec. 22. Assignment of Rights and Duties.

The rights and duties of a County contract are not transferable or otherwise assignable without the written consent of the Procurement Director or if above the threshold amount set in A.R.S. § 41-2535(A) by the Mohave County Board of Supervisors.

ARTICLE IV. SPECIFICATIONS

Sec. 1. Definition

As used in this Article, "specification" is used interchangeably with "scope" or "scope of work" and 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.

Sec. 2. Maximum Practicable Competition

Art. IV, Sec. 2(1) All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs and shall not be unduly restrictive.

Art. IV, Sec. 2(2) To the extent practicable and unless otherwise permitted by this Code, all specifications shall describe the County's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.

Art. IV, Sec. 2(3) Proprietary specifications shall not be used unless the Procurement Director determines in writing that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of proprietary specifications.

Art. IV, Sec. 2(4) To the extent practicable, the County shall use accepted commercial specifications and shall procure standard commercial materials.

Sec. 3. Specifications Prepared by Other Than County Personnel

Art. IV, Sec. 3(1) All specifications, including those prepared by architects, engineers, consultants and others for public contracts, or subcontractors, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying this County's needs and shall not be unduly restrictive.

Art. IV, Sec. 3(2) No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

Sec. 4. Brand Name or Equal Specification

A brand name or equal specification may be used when the Procurement Officer determines that use of brand name or equal specifications is advantageous to the County.

Sec. 5. Brand Name Specification

A brand name specification may be prepared and utilized only if the Procurement Director makes a written determination that only the identified brand name item will satisfy the County's needs.

ARTICLE V. PROCUREMENT OF CONSTRUCTION

Sec. 1. Definitions

In this article, unless the context otherwise requires:

Art. V, Sec. 1(1) "Capital Improvement" means an outlay of funds for the acquisition or improvement of real property, which extends the life or increases the productivity of the real property.

Art. V, Sec. 1(2) "Construction" means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of existing public infrastructures or facilities, including structures, buildings or real property.

Art. V, Sec. 1(3) "Construction-manager-at-risk" means a project delivery method in which:

- (a) There is a separate contract for design services and a separate contract for construction services.
- (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
- (c) Design and construction of the project may be in sequential phases or concurrent phases.
- (d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Art. V, Sec. 1(4) "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

- (a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
- (b) A combination of construction and, as elected by the County, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.

Art. V, Sec. 1(5) "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

Art. V, Sec. 1(6) "Design-bid-build" means a project delivery method in which:

- (a) There is a sequential award of two separate contracts.
- (b) The first contract is for design services.
- (c) The second contract is for construction.
- (d) Design and construction of the project are in sequential phases.
- (e) Finance services, maintenance services and operations services are not included.

Art. V, Sec. 1(7) "Design-build" means a project delivery method in which:

- (a) There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the County may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.
- (b) Design and construction of the project may be in sequential phases or concurrent phases.
- (c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Art. V, Sec. 1(8) "Finance services" means financing for a construction services project.

Art. V, Sec. 1(9) "Force Account" means construction work performed by the County's regularly employed personnel.

Art. V, Sec. 1(10) "Infrastructure Facility" means a building; structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment.

Art. V, Sec. 1(11) "Job-order-contracting" means a project delivery method in which:

- (a) The contract is a requirements contract for indefinite quantities of construction.

(b) The construction to be performed is specified in job orders issued during the contract.

(c) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.

Art. V, Sec. 1(12) "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Art. V, Sec. 1(13) "Operations services" means routine operation of existing facilities, structures, buildings or real property.

Art. V, Sec. 1(14) "Preconstruction services" means advice during the design phase.

Art. V, Sec. 1(15) "Professional Design Services" means architect services, assayer services, engineering services, geologist services, landscape architect services, and land surveying service or any combination of those services that are legally required to be accomplished, reviewed, and approved by professionals registered to practice in the pertaining discipline in the State of Arizona.

Sec. 2. Procurement of Construction

Art. V, Sec. 2(1) Contracts for construction that are expected to exceed the threshold amount set in A.R.S. § 41-2535(A) shall be procured in accordance with Article III, Sec. 3 (Competitive Sealed Bidding) except as otherwise provided for in Article V, Sec. 4 (Procurement of Construction Services); Article III, Sec. 6 (Small Purchases); Article III, Sec. 7 (Sole Source Procurement); Article III, Sec. 8 (Competition Impracticable); and Article III, Sec. 9 (Emergency Procurements).

Art. V, Sec. 2(2) Simplified Construction Procurement: Contracts for construction that do not exceed the threshold amount set in A.R.S. § 41-2535(A) may be made pursuant to operational procedures adopted by the Procurement Director in accordance with this Code.

Art. V, Sec. 2(3) All contracts entered into under this section shall be executed in the name of the County by the Procurement Director or if in excess of the threshold amount set in A.R.S. § 41-2535(A) by the Mohave County Board of Supervisors in accordance with the requirements of A.R.S. Title 34 and this Code.

Sec. 3. Procurement of Professional Design Services

Contracts for professional design services shall be solicited through a request for qualifications except as otherwise provided for in Article III, Sec. 6 (Small Purchases); Article III, Sec. 7 (Sole Source Procurement); Article III, Sec. 8 (Competition Impracticable); Article III, Sec. 9 (Emergency Procurements); and Article V, Sec. 6 (Direct Selection of Pre-Qualified Technical Registrants). All contracts entered into under this

section shall be executed in the name of the County by the Procurement Director or if in excess of the threshold amount set in A.R.S. § 41-2535(A) by the Mohave County Board of Supervisors in accordance with the requirements of A.R.S. Title 34 and the Mohave County Procurement Code.

Sec. 4. Procurement of Construction Services

Contracts for construction services shall be solicited through a design-build, construction-manager-at-risk or job-order-contracting selection process utilizing a request for qualifications except as otherwise provided for in Article III, Sec. 6 (Small Purchases); Article III, Sec. 7 (Sole Source Procurement); and Article III, Sec. 8 (Competition Impracticable); and Article III, Sec. 9 (Emergency Procurements). All contracts entered into under this section shall be executed in the name of the County by the Procurement Director or if in excess of the threshold amount set in A.R.S. § 41-2535(A) by the Mohave County Board of Supervisors in accordance with the requirements of A.R.S. Title 34 and the Mohave County Procurement Code.

Sec. 5. Construction by County Employees

A building, structure, addition, or alteration of a public facility may be constructed by force account if the cost does not exceed the amount established and adjusted each year in accordance with A.R.S. §34-201.

Sec. 6. Direct Selection of Pre-Qualified Technical Registrants

Art. V, Sec. 6(1) If procurement is by direct selection, a written determination by the County Engineer citing the basis of award and for the selection of the particular technical registrant shall be included in the contract file. The best interests of the county shall be considered in each instance.

Art. V, Sec. 6(2) The Procurement Director shall maintain a list of technical registrants who are properly licensed with the State of Arizona Board of Technical Registration, that have expressed an interest in performing work for the County and have provided evidence of their professional qualifications for such work. The list may be categorized to reflect the person or firm's primary field of expertise. Persons or firms desiring to be included on the pre-qualified list may notify the Procurement Director or may register with the Procurement Department in-person.

Art. V, Sec. 6(3) Each person or firm listed on the register shall be notified annually of their status and invited to update their professional qualifications. In addition to publication in the official newspaper of the County, a public advertisement may be placed in a major territorial newspaper of general circulation inviting firms to apply for inclusion on the County's list of pre-qualified technical registrants.

Art. V, Sec. 6(4) Firms who have failed to provide satisfactory evidence of qualifications or have performed unsatisfactorily during the past twelve (12) months may be subject to corrective action in accordance with Article IX of this Code.

Art. V, Sec. 6(5) All contracts entered into under this section shall be executed in the name of the County by the Procurement Director or if in excess of the threshold amount set in A.R.S. § 41-2535(A) by the Mohave County Board of Supervisors in accordance with the requirements of A.R.S. Title 34 and the Mohave County Procurement Code.

Sec. 7. Non-substantial Failure to Comply.

The Procurement Director may determine that noncompliance with any provision of this section is non-substantial and may allow for correction or may waive minor informalities or irregularities.

ARTICLE VI. CONTRACT CLAUSES

Sec. 1. Contract Clauses

All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Procurement Director, after consultation with the County Attorney, may issue clauses appropriate for material, service, or construction contracts, addressing among others the following subjects:

- (a) the unilateral right of the County to order in writing changes in the work within the scope of the contract;
- (b) the unilateral right of the County to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- (c) variations occurring between estimated quantities of work in contract and actual quantities;
- (d) defective pricing;
- (e) liquidated damages;
- (f) specified excuses for delay or nonperformance;
- (g) termination of the contract for default;
- (h) termination of the contract in whole or in part for the convenience of the County;
- (i) suspension of work on a construction project ordered by the County; and
- (j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract;
 - i. When the contract is negotiated;
 - ii. When the contractor provides the site or design; or
 - iii. When the parties have otherwise agreed with respect to the risk of differing site conditions.

Sec. 2. Price Adjustments

Art. VI, Sec. 2(1) Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed in one or more of the following ways:

- (a) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) By unit prices specified in the contract or subsequently agreed upon;
- (c) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- (d) In such other manner as the contracting parties may mutually agree; or
- (e) In the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County as accounted for in accordance with Article VII.

Art. VI, Sec. 2(2) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Article VII.

Sec. 3. Standard Clauses and Their Modification

The Procurement Director, after consultation with the County Attorney, may establish standard contract clauses for use in County contracts. If the Procurement Director establishes any standard clauses addressing the subjects set forth in Section 1 of this Article, such clauses may be modified with approval of the Procurement Director or the Procurement Director's designee.

ARTICLE VII. COST PRINCIPLES

Sec. 1. Cost Principles

The Procurement Director shall establish cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

Sec. 2. Cost or Pricing Data

Art. VII, Sec. 2(1) The submission of current cost or pricing data may be required in connection with an award in situations in which analysis of the proposed price is essential to determine that the price is reasonable and fair.

Art. VII, Sec. 2(2) Any contract, change order or contract modification under which cost or pricing data is required may contain a provision that the price to the County shall be adjusted to exclude any significant amounts by which the County finds that the price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed on between the parties. Such adjustment by the County may include profit or fee.

Art. VII, Sec. 2(3) The requirements of this section need not be applied to contracts if any of the following apply:

- (a) The contract price is based on adequate price competition.
- (b) The contract price is based on established catalogue prices or market prices.
- (c) Contract prices are set by law or regulation.

ARTICLE VIII. MATERIALS MANAGEMENT

Sec. 1. Definitions.

In this article, unless the context otherwise requires:

Art. VIII, Sec. 1(1)"Property" means assets with a useful life of more than one year.

Art. VIII, Sec. 1(2)"Property transfer form" means a form submitted by the department requesting transfer of fixed assets between departments or transfer of property to or from the Surplus Property Program.

Art. VIII, Sec. 1(3)"Surplus property" means property no longer needed by County departments for their operations, obsolete property, property in poor or nonworking condition, or property that is a byproduct (e.g. scrap metal, used tires and oil, etc.).

Art. VIII, Sec. 1(4)"Unclaimed, lost and confiscated property" means all property used as evidence in the courts and remaining unclaimed after final disposition, property seized by a peace officer as being used unlawfully, and all property coming into the hands of any County Officer or employee as lost or unclaimed.

Art. VIII, Sec. 1(5) "Established Markets" means those places where materials are regularly bought and sold at prices set by open competition.

Sec. 2. Materials Management Guidelines.

In addition to directives issued by the County Manager, the Procurement Director shall establish additional guidelines as may be required governing the following:

- (a) The transfer of surplus property and operation of the surplus property program.
- (b) The sale or disposal of surplus, unclaimed, and seized property by public auction, competitive formal and informal bid, electronic, or other appropriate method designated by regulation.
- (c) The trade-in of surplus property for purchase of new equipment.
- (d) The purchase of high volume commodities by electronic reverse auction.

Sec. 3. Inventory Management.

Art. VIII, Sec. 3(1) The Procurement Director shall control and supervise all existing and future County warehouses established for the purpose of purchasing, storing, and issuing

supplies used in large quantities and which may be purchased and centrally stored advantageously.

Art. VIII, Sec. 3(2) The Procurement Director will establish policies and procedures governing the addition or deletion of items carried in inventory, the sale or other disposal of inventory items no longer needed, delivery and other services provided to using departments, and any policies or procedures required for efficient and effective operation of the inventory system.

Sec. 4. Disposition of Surplus Property.

Art. VIII, Sec. 4(1) The Procurement Director will operate a surplus property program for the purpose of receiving, storing, transferring, or selling surplus, unclaimed, lost or confiscated property no longer needed by using departments.

Art. VIII, Sec. 4(2) Using departments shall use the Property Transfer Form to request authorization to transfer fixed assets to another department, or to request transfer of property into or from the Surplus Property Program.

Art. VIII, Sec. 4(3) Unless otherwise provided for, surplus property no longer needed by any using department shall be offered for sale through competitive bids, public auction, online sales, or established markets in accordance with A.R.S. §11-251. Sales by competitive bid will be conducted in accordance with Article III, Sec. 3 (Competitive sealed bidding) or Article III, Sec. 6 (Small Purchases), except that sale shall be made to the highest responsible bidder. Public auctions may be conducted on site or electronically.

Art. VIII, Sec. 4(4) Notwithstanding any other provision surplus property not needed by using departments may be disposed of other than by competitive bid, public auction, online sales, or established markets in accordance with A.R.S. §11-251, provided that any such noncompetitive disposition is made pursuant to a request submitted to the Procurement Director for review, approval of the County Attorney and approval by the Board of Supervisors. The Board of Supervisors shall consider the monetary loss to the County and determine whether such disposition is in the public interest.

Art. VIII, Sec. 4(5) Unless otherwise provided, all proceeds from sale or auction of surplus property will be deposited into the County's general fund. Proceeds from sale of enterprise, federal, grant or other special designation property will be reimbursed, less prorated selling expenses, to the appropriate fund, after completion of each sale.

Sec. 5. Disposition of Unclaimed, Lost, Confiscated Property.

Art. VIII, Sec. 5(1) The Sheriff's department will deliver to the Procurement Department – Central Services Division all unclaimed, lost, and confiscated property not claimed or taken away by owner or finder, excluding all firearms, ammunition, knives or other weapons and excluding any items determined to be of use in law enforcement operations.

Art. VIII, Sec. 5(2) After delivery to the Procurement Office, unclaimed or lost property may be transferred to using departments upon submission of a detailed request from a using department head to the Procurement Director. The request shall include a detailed description of the equipment and explanation of why the equipment is needed. A copy of approved requests will be forwarded to the Finance department. Departments receiving unclaimed or lost property will place an inventory tag on the equipment and add such equipment to their inventory records.

Art. VIII, Sec. 5(3) Unless otherwise provided for, all remaining unclaimed, lost and confiscated property shall be disposed of at public auction. Notice of public auction of unclaimed, lost and confiscated property shall be published four (4) consecutive times prior to sale, the first notice to be at least thirty (30) days prior to the date of sale. All public auctions will be conducted under the direction of the Procurement Director. Proceeds of the auctions, less selling expenses if applicable, will be deposited into the general fund unless otherwise required by grant(s) or court order(s).

Art. VIII, Sec. 5(4). Notwithstanding any other provision surplus, unclaimed, or lost property not needed by using departments may be disposed of other than by competitive bid, public auction, online sales, or established markets in accordance with A.R.S. §11-251, provided that any such noncompetitive disposition is made pursuant to a request submitted to the Procurement Director for review, approval of the County Attorney and approval by the Board of Supervisors. The Board of Supervisors shall consider the monetary loss to the County and determine whether such disposition is in the public interest.

Art. VIII, Sec. 5(5). Notwithstanding the provisions of Article VIII, Sec. 5(4) surplus emergency response apparatus and/or related equipment may be disposed of through noncompetitive sale with public emergency, fire, rescue, or medical agencies.

ARTICLE IX. LEGAL AND CONTRACTUAL REMEDIES

Sec. 1. General Information

Art. IX, Sec 1(1) Definitions. In this Article unless the context otherwise requires:

(a) "Adequate evidence" means more than mere accusation but less than substantial evidence. Consideration shall be given to the amount of credible information available, reasonableness in view of surrounding circumstances, corroboration, and other inferences that may be drawn from the existence or absence of affirmative facts.

(b) "Affiliate" means any person whose governing instruments requires it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidary relationship between persons.

(c) "Debarment" means an action taken by the Procurement Director under Section 28-99 to prohibit a person from participating in County procurements.

(d) "Filed" means delivery to the Procurement Officer or to the Procurement Director, whichever is applicable. A time/date stamp affixed to a document by the office of the Procurement Officer or the Procurement Director, whichever is applicable, shall be determinative of the time of delivery for purposes of filing.

(e) "Governing instruments" means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

(f) "Interested party" means an actual or prospective bidder, respondent or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an economic interest exists will depend upon the circumstances of each case.

(g) "Substantial evidence" means such relevant evidence as a reasonable person might accept as sufficient to support a particular conclusion.

(h) "Suspension" means an action taken by the Procurement Director under Art. IX, Sec. 4(11) (Suspension) temporarily disqualifying a person from participating in County procurements.

Art. IX, Sect 1(2) Exclusive Remedy. Notwithstanding any law to the contrary, this Article shall provide the exclusive procedure for asserting a claim or cause of action against Mohave County arising in relation to any procurement conducted under this Code.

Sec. 2 Protest and Appeals of Solicitations and Contract Awards

Art. IX, Sec. 2(1) Right to Protest. Any actual Interested party who is aggrieved in connection with the solicitation or award of a contract shall initially protest to the Procurement Officer.

Art. IX, Sec. 2(2) Resolution of Protests. The Procurement Officer issuing the solicitation shall have the authority to resolve protests. Appeals from the decisions of the Procurement Officer may be made to the Procurement Director pursuant to this Section.

Art. IX, Sec. 2(3) Filing of a Protest

(a) Content of Protest. The protest shall be in writing and shall include the following information:

- i. The name, address and telephone number of the protestant;
- ii. The signature of the protestant or its representative;
- iii. Identification of the solicitation or contract number;
- iv. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- v. The form of relief requested.

Art. IX, Sec. 2(4) Time for Filing Protests

(a) Protests Concerning Improprieties in a Solicitation – Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five (5) working days before the solicitation due date.

(b) In cases other than those covered in Subsection (a) above, protests shall be filed within ten (10) days after issuance of notification of award or issuance of notice of intent to award, as applicable.

(c) The Procurement Officer, without waiving the County's right to dismiss the protest for lack of timeliness, may consider any protest that is not filed timely.

Art. IX, Sec 2(5) Notice. The Procurement Officer shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right to intervene.

Art. IX, Sec. 2(6) Stay of Procurement during the Protest. In the event of a timely protest under Article IX, Sec. 2(4) (Time for Filing Protests), the County may proceed further with the solicitation or with the award of the contract unless the Procurement Director makes a written determination that there is a reasonable probability that the protest will be sustained or that the stay of procurement is not contrary to the substantial interests of the County.

Art. IX, Sec. 2(7) Confidential Information

(a) Material submitted by a protestant shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law as determined pursuant to Article I, Sec. 5 (Confidential Information).

(b) If the protestant believes the protest contains material that should be withheld, a statement advising the Procurement Officer of this fact shall accompany the protest submission in accordance with Article I, Sec. 5 (Confidential Information).

Art. IX, Sec. 2(8) Decision by the Procurement Officer.

(a) The Procurement Officer shall issue a written decision within fourteen (14) days after a protest has been filed pursuant to Article IX, Sec. 2(4) (Time for Filing Protests). The decision shall contain an explanation of the basis of the decision.

(b) The Procurement Officer shall furnish a copy of the decision to the protestant, by certified mail, return receipt requested, or by any other method including facsimile or electronically, that provides evidence of receipt.

(c) The time limit for decisions set forth in this subsection may be extended by the Procurement Director for a reasonable time not to exceed thirty (30) days. The Procurement Officer shall notify the protestant in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

(d) If the Procurement Officer fails to issue a decision within the time limits set forth herein, the protestant may proceed as if the Procurement Officer had issued an adverse decision.

Art. IX, Sec. 2(9) Protest Remedies

(a) If the Procurement Officer sustains the protest in whole or part and determines that a solicitation, evaluation process, proposed contract award, or contract award does not comply with this Code, the officer shall implement an appropriate remedy.

(b) In determining an appropriate remedy, the Procurement Officer shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the County, the urgency of the procurement and the impact of the relief on the using department's mission.

(c) An appropriate remedy may include one or more of the following:

- i. Decline to exercise an option to renew under the contract;
- ii. Reject all bids, responses or proposals;
- iii. Terminate the contract;
- iv. Reissue the solicitation;
- v. Issue a new solicitation;
- vi. Award a contract consistent with this Code;
- vii. Such other relief as is determined necessary to ensure compliance with this Code.

Art. IX, 2(10) Appeals of Protest to the Procurement Director

(a) For protests, an appeal from a decision entered or deemed to be entered by the Procurement Officer shall be filed with the Procurement Director within seven (7) days from the date the decision is issued. The appellant shall also file a copy of the appeal with the Procurement Officer.

(b) Content of Appeal. The appeal shall contain:

- i. The information set forth in Article IX, Sec. 2(3), (including the identification of protected information in the manner set forth in Article IX, Sec 2(7) (Confidential Information));
- ii. A copy of the decision of the Procurement Officer; and

- iii. The precise factual or legal error in the decision of the Procurement Officer from which an appeal is taken.

(c) Notice of Appeal. The Procurement Director shall give notice of the appeal to the successful contractor if award has been made or if no award has been made, to interested parties.

- i. The parties named in this subsection shall have the right to request copies of the appeal and to intervene in the proceedings.
- ii. The Procurement Director shall, upon request, furnish copies of the appeal to those named in this subsection.

Art. IX, Sec. 2(11) Stay of Procurement during the Appeal. If an appeal is filed during the procurement and before an award of a contract and the procurement or award of the contract was stayed by the Procurement Director, the filing of an appeal shall automatically continue the stay unless the Procurement Director makes a written determination that the procurement or award of the contract without delay is necessary to protect substantial interests of the County.

Art. IX, Sec. 2(12) Procurement Officer Report.

(a) The Procurement Officer shall file a report on the appeal with the Procurement Director within seven (7) days from the date the appeal is filed. At the same time, the Procurement Officer shall furnish a copy of the report to the appellant by certified mail, return receipt requested, and to any interested parties. The report shall contain copies of:

- i. The appeal;
- ii. Any other documents that are relevant to the protest; and
- iii. A statement by the Procurement Officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

(b) Request for Extension for Filing of Report. The Procurement Officer may request in writing an extension of the time period setting forth the reason for extension.

(c) Procurement Director's Determination on Request for Extension. The Procurement Director's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the report. The Procurement Director shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

Art. IX, Sec. 2(13) Appellant's Comment on Report.

(a) The appellant shall file comments on the Procurement Officer's report with the Procurement Director within seven days after receipt of the report. Copies of the comments shall be provided by the appellant to the Procurement Officer and all other interested parties. The comments must contain a statement or confirmation as to the appellant's requested form of relief.

(b) Extension for Filing Appellant's Comment on Report. The Procurement Director may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth above by stating the reason an extension is necessary.

(c) Procurement Director's Determination on Extension for Filing Appellant's Comment on Report. The Procurement Director's determination on the request shall be in writing, state the reasons for the determination and, if the extension is granted, set forth a new date for the filing of comments. The Procurement Director shall notify the Procurement Officer of any extension.

Art. IX, Sec. 2(14) Final Determination. If the Procurement Director does not sustain the appeal, the Procurement Director's denial of the appeal or the decision to dismiss the appeal shall be in the form of a written determination and shall constitute the County's Final Determination.

(a) The Procurement Director shall issue a written determination within fourteen (14) days after an appeal has been filed pursuant to Art. IX, 2(10) (Appeals of Protest to the Procurement Director). The written determination shall contain an explanation of the basis of the decision.

(b) Dismissal. The Procurement Director shall dismiss an appeal and issue a written determination, if:

- i. The appeal does not state a valid basis, including a detailed statement of the legal and factual grounds, for protest; or
- ii. The appeal is untimely pursuant to the rules of this Section; or.

(c) Denial. The Procurement Director shall deny the appeal if, based upon the totality of the circumstances, the solicitation, evaluation process, proposed award, or award was made in compliance with this Code. The denial shall be in the form of a written determination.

(d) If the Procurement Director fails to issue a written determination within the time limits set forth herein, the appellate may proceed as if the Procurement Director had issued an adverse determination, and it shall be considered the County's Final Determination.

Art. IX, Sec. 2(15) Appeal Remedies.

(a) If the Procurement Director sustains the appeal in whole or part and determines that a solicitation, evaluation process, proposed award, or award does not comply with this Code, remedies may be implemented pursuant to Article IX, Sec. 2(9) (Protest Remedies).

(b) If the Procurement Director denies the appeal, the appellant may request a hearing by submitting a written request to the Procurement Director within five (5) days of receipt of the Procurement Director's final decision. Upon receipt of the written request, the parties shall follow the hearing procedures specified in Art. IX, Sec. 3(9) and Art. IX, Sec. 3(10).

Art. IX, Sec 2(16). Judicial Review of Solicitation and Contract Award Appeals. The decision of the hearing officer is subject to special action review to the Superior Court by any party to the proceeding. Exhaustion of the procedures set forth in this Code shall be a condition precedent to seeking judicial review and the party seeking review shall file the special action within thirty (30) days of a final decision by the hearing officer.

Sec. 3. Contract Claims

Art. IX, Sec. 3(1) Content of Contract Claim. The Contract Claim shall be in writing and shall include the following information:

- (a) The name, address and telephone number of the claimant;
- (b) The signature of the claimant or its representative;
- (c) Identification of the solicitation or contract number;
- (d) A detailed statement of the legal and factual grounds of the claim including copies of relevant documents; and
- (e) The form of relief requested.

Art. IX, Sec. 3(2) Resolution of Contract Claims and Controversies. The Procurement Officer administering the contract shall have the authority to settle and resolve Contract Claims and controversies. Appeals from decisions of the Procurement Officer shall be made to the Procurement Director pursuant to this Section.

Art. IX, Sec. 3(3) Procurement Officer's Final Decision. If a contract claim or controversy cannot be resolved by mutual agreement, the Procurement Officer shall, upon a written request by the contractor for a final decision, issue a written decision no more than sixty (60) days after the request is filed.

(a) Before issuing a final decision, the Procurement Officer shall review the facts pertinent to the contract claim or controversy and secure any necessary assistance from legal, financial, procurement, and other advisors.

(b) The Procurement Officer shall furnish a copy of the Officer's Final Decision to the contractor, by certified mail, return receipt requested, or by any other method including facsimile or electronically, that provides evidence of receipt.

(c) The decision shall include:

- i. A description of the controversy;
- ii. A reference to the pertinent contract provision;
- iii. A statement of the factual areas of agreement or disagreement;
- iv. A statement of the Procurement Officer's decision, with supporting rationale;
- v. A paragraph substantially as follows:

"This is the final decision of the Procurement Officer. This decision may be appealed to the Procurement Director of the Procurement Department. If you appeal, you must file a written notice of appeal with the Procurement Director within five days from the date you receive this decision."

Art. IX, Sec. 3(4) Issuance of a Timely Decision. The time limit for decisions set forth in Art. IX, Sec. 3(3) (Procurement Officer's Final Decision) may be extended for good cause.

(a) The Procurement Officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision is anticipated.

(b) If the Procurement Officer fails to issue a Final Decision within sixty days after the request on a claim is filed or within the time prescribed under this subsection, the contractor may proceed as if the Procurement Officer had issued an adverse decision.

Art. IX, Sec. 3(5) Appeals of Contract Claims to the Procurement Director.

(a) An appeal from a Final Decision of a Procurement Officer on a claim shall be filed with the Procurement Director within five (5) days from the date the decision is received. The appellant shall also file a copy of the appeal with the Procurement Officer.

(b) Content of Appeal. The appeal shall contain a copy of the Final Decision of the Procurement Officer and the basis for the precise factual or legal error(s) in the decision of the Procurement Officer from which an appeal is taken.

(c) Final Determination. Upon review of the appeal of the Procurement Officer's Final Decision, the Procurement Director shall make a Final Determination of the appeal and issue a written determination within fourteen (14) days after the appeal has been filed pursuant to this section. The written determination shall contain an explanation of the basis of the decision, and it shall be the County's Final Determination.

- i. The Procurement Director shall deny the appeal if, based upon the totality of the circumstances, the Procurement Officer's decision is consistent with the provisions of this Code.
- ii. The Procurement Director may affirm the contract claim in whole or in part, and may provide such relief as is determined appropriate.
- iii. If the Procurement Director fails to issue a Final Determination within the time limits set forth herein, the appellate may proceed as if the Procurement Director had issued an adverse determination, and it shall be considered the County's Final Determination.

(d) Any party may request a hearing of the Procurement Director's Final Determination of the appeal by submitting a written request to the Procurement Director within five (5) days of receipt of the Procurement Director's Final Determination, or in the event the Director has not issued a Final Determination and the time period for its issuance has expired as outlined in paragraph (c) of this section, within five (5) days after the expiration of the deadline.

- i. Upon receipt of a timely written request the Procurement Director shall submit the appeal to a hearing officer in accordance with Art. IX, Sec. 3(9) (Hearing).
- ii. Failure to submit a timely written request shall preclude the party from obtaining a hearing.

(e) Prior to the Procurement Director making a ruling on the appeal of the Procurement Officer's Final Decision, the Procurement Director may, in the Director's sole discretion:

- i. Assign the claim to mediation services in accordance with Art. IX, Sec. 3(7) (Mediation); or
- ii. Assign the claim to arbitration in accordance with Art. IX, Sec. 3(8) (Arbitration).

(f) In the event the appeal is assigned to mediation or arbitration, the appeal shall be stayed until mediation or arbitration are complete.

Art. IX, Sec. 3(6) Controversies Involving County Claims Against a Contractor.

(a) All contract claims asserted by the County against a contractor that are not resolved by mutual agreement shall promptly be referred by the Procurement Officer to the Procurement Director.

(b) The Procurement Director shall submit the contract claim for resolution to mediation in accordance with Art. IX, Sec. 3(7) (Mediation); or arbitration in accordance with Art. IX, Sec. 3(8) (Arbitration); or to a hearing officer, in accordance with Art. IX, Sec. 3(9) (Hearing).

Art. IX, Sec. 3(7) Mediation. Contract claims and controversies may be resolved utilizing mediation services if the Procurement Director determines the use of such services is in the best interest of the County.

(a) The Procurement Director shall appoint a licensed Arizona attorney to mediate the contract claim.

(b) The estimated cost of the mediation services shall be disclosed no later than thirty days in advance of the mediation. The cost of the mediation shall be divided equally between Mohave County and the other party or parties.

(c) The mediator shall be neutral and shall seek a fair resolution of the dispute for all parties involved.

(d) All parties to the mediation shall participate in good faith mediation.

(e) In the event the parties are unable to reach an agreement at mediation:

- i. For contract claims asserted against Mohave County, the contract claim shall be returned to the Procurement Director for a final ruling on the appeal from the Procurement Officer's Final Decision;
- ii. For contract claims asserted by Mohave County, the contract claim shall be referred to a hearing in accordance with Art. IX, Sec. 3(9) (Hearing).

Art. IX, Sec. 3(8) Arbitration. Contract claims and controversies may be resolved utilizing arbitration if the Procurement Director determines the use of arbitration is in the best interest of the County. The claim or controversies shall be settled by arbitration in accordance with the current construction industry arbitration rules of the American Arbitration Association or, at the option of the County, in accordance with the provisions of the Arizona Revised Statutes, Title 12, Chapter 9, Article I.

Art. IX, Sec. 3(9) Hearing. If a hearing is required or permitted under this Article, the Procurement Director shall appoint a Hearing Officer.

(a) The Procurement Director shall appoint a licensed Arizona attorney as the Hearing Officer.

(b) The estimated cost of the hearing officer services shall be disclosed no later than thirty days in advance of the hearing. The cost of the hearing shall be divided equally between Mohave County and the other party or parties.

(c) The Hearing Officer shall arrange for a prompt hearing and notify the parties of the time and place of the hearing.

(d) The Hearing Officer shall be neutral, fair, and impartial.

(e) The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.

(f) The Hearing Officer may:

- i. Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- ii. Require parties to state their positions concerning the various issues in the proceeding;
- iii. Require parties to produce for examination those relevant witnesses and documents under their control;
- iv. Rule on motions and other procedural items on matters pending before such officer;
- v. Regulate the course of the hearing and conduct of participants;
- vi. Establish time limits for submission of motions or memoranda;
- vii. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
 - (1) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - (2) Excluding all testimony of an unresponsive or evasive witness; and

(3) Expelling the person from further participation in the hearing;

viii. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and

ix. Administer oaths or affirmations.

(g) A transcribed record of the hearing shall be made available at cost to the requesting party.

Art. IX, Sec. 3(10) Hearing Officer's Decision. The Hearing Officer's Decision shall be final. The decision shall be based on the evidence presented and shall include findings of fact and conclusions of law. The decision shall be sent to all parties by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

Art. IX, Sec. 3(11) Judicial Review of Hearing Officer's Decision. The decision of the hearing officer for a contract claim is subject to special action review to Superior Court by any party to the proceeding. Exhaustion of the procedures set forth in this Code shall be a condition precedent to seeking judicial review and the party seeking review shall file the special action within thirty (30) days of a final decision by the hearing officer.

Sec. 4. Debarment or Suspension

Art. IX, Sec. 4(1) Authority to Debar or Suspend. The Procurement Director has the sole authority to debar or suspend a person from participating in County procurements.

Art. IX, Sec. 4(2) Initiation of Debarment. Upon receipt of information concerning a possible cause for debarment, the Procurement Director may investigate the possible cause. If the Procurement Director has a reasonable basis to believe that a cause for debarment exists, the Procurement Director may debar a person in accordance with this Code.

Art. IX, Sec. 4(3) Debarment of Suspension Causes. The Causes for Debarment or Suspension Shall be Limited to the following:

(a) Conviction of any person or any affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(b) Conviction of any person or any affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, or receiving stolen property; or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor and which conviction arises out of or obtaining or attempting to obtain a

public or private contract or subcontract, or in the performance of such contract or subcontract.

(c) Conviction or civil judgment finding a violation by any person or affiliate of any person under state or federal antitrust statutes arising out of the response to a solicitation.

(d) Violations of contract provisions within three (3) years of current debarment action, as set forth below, of a character which are reasonably deemed to be so serious as to justify debarment action:

- i. Abandonment of a contract without good cause; or
- ii. Knowingly fails without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
- iii. Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

(e) Any other cause that the Procurement Director reasonably determines to be so serious and compelling as to affect responsibility as a County contractor, including suspension or debarment of such person or any affiliate of such person by another governmental entity for any cause listed in this section.

Art. IX, Sec. 4(4) Matters Not Proper for Debarment or Suspension. Any conviction or judgment dated more than three (3) years prior to the notice of suspension or notice of debarment shall not be a basis for any debarment or suspension of a person or an affiliate of a person.

Art. IX, Sec. 4(5) Period of Debarment. The period of time for a debarment shall not exceed three (3) years from the date of the debarment determination. If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by that other debarring agency.

Art. IX, Sec. 4(6) Notice of Debarment. If the Procurement Director implements debarment, the Procurement Director shall notify the person in writing within seven (7) days by certified mail, return receipt requested, of the debarment action.

(a) The person may submit a request in writing to the Procurement Director for a hearing within fourteen (14) days of issuance of the Procurement Director's debarment action.

(b) If a hearing is timely requested, it shall be conducted in accordance with Art. IX, Sec. 3(9); Art. IX, Sec. 3(10); and Art. IX, Sec. 3(11).

Art. IX, Sec. 4(7) Notice to Affiliates. If the Procurement Director proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.

(a) The affiliate shall in writing advise the Procurement Director within thirty (30) days of receipt of the notice of a hearing of its intention to appear.

(b) Failure to provide written notice of appearance within the thirty-day period shall be a waiver of the right to appear in the hearing.

Art. IX, Sec. 4(8) Imputed Knowledge.

(a) Improper conduct by a person may be imputed to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge or approval of, the contractor.

(b) The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, or approval of the contractor.

Art. IX, Sec. 4(9) Reinstatement. The Procurement Director may at any time after a final decision on debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.

(a) Any debarred person may request reinstatement by submitting a petition to the Procurement Director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.

(b) The Procurement Director may require a hearing on the request for reinstatement.

(c) The decision on reinstatement shall be in writing and specify the factors on which it is based.

Art. IX, Sec. 4(10) Limited Participation. The Procurement Director may allow a debarred person to participate in County contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the County. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Art. IX, Sec. 4(11) Suspension. The Procurement Director may suspend a person from receiving any award in order to protect the County's interests.

Art. IX, Sec. 4(12) Period of Suspension. The period of suspension shall not be more than sixty (60) days unless the Procurement Director is informed of compelling reasons to extend the period of suspension.

Art. IX, Sec. 4(13) Notice of Suspension. The Procurement Director shall notify the person suspended by certified mail, return receipt requested.

(a) The notice of suspension shall state:

- i. The basis for suspension;
- ii. The period, including dates, of the suspension;
- iii. That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and
- iv. That the person may request a hearing on the suspension if the person files a written request for a hearing with the Procurement Director within five (5) days after receipt of the notice. Receipt means the earlier of actual receipt or the first attempted delivery by certified mail to the persons last know address.

(b) If a suspended party submits a request for hearing within five (5) days of receipt of the notice of suspension, the Procurement Director shall arrange for a hearing in accordance with Art. IX, Sec. 3(9); Art. IX, Sec. 3(10); and Art. IX, Sec. 3(11).

Art. IX, Sec. 4(14) Master List for Suspension and Debarment. The Procurement Director shall maintain a Master List of debarments and suspensions under this Section.

(a) The Master List shall show as a minimum the following information:

- i. The names and vendor number of those persons whom the County has debarred or suspended under this Article;
- ii. The basis of authority for the action;
- iii. The period of debarment or suspension, including the expiration date; and
- iv. The name of the debarring or suspending agency, if the County's debarment or suspension is based on debarment or suspension by another governmental agency.

(b) The Master List shall include a separate section listing persons voluntarily excluded from participation in County contracts.

ARTICLE X. COOPERATIVE PROCUREMENT

Sec. 1. Definitions.

In this Article, unless the context otherwise requires:

Art. X, Sec. 1(1) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.

Art. X, Sec. 1(2) "External Procurement Activity" means any buying organization not located in this State which, if located in this State would qualify as a Public Procurement Unit, Agencies of the United States, any other State or group of States, and non-profit associations are external Procurement activities.

Art. X, Sec. 1(3) "Local Public Procurement Unit" means any county, city, town, and any other subdivision of the State, public authority, educational, health or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services and construction.

Art. X, Sec. 1(4) "Public procurement unit" means any of the following:

- (a) a local public procurement unit,
- (b) an external procurement activity,
- (c) a State public procurement unit, and
- (d) any not-for-profit entity comprised of more than one unit or activity listed in subparagraphs (a), (b), or (c).

Art. X, Sec. 1(5) "State Public Procurement unit" means the Arizona State Procurement Office or the central procurement office of any other State.

Sec. 2. Applicability.

Agreements entered into pursuant to this Article shall be limited to the areas of procurement, warehousing or materials management.

Sec. 3. Cooperative Procurement Agreements Required.

The County is not authorized to participate in cooperative purchasing unless, a Cooperative Procurement agreement is executed between the parties. All agreements entered into pursuant to this Article shall be signed by the Procurement Director.

Sec. 4. Cooperative Purchasing Authorized.

Art. X, Sec. 4(1) The County may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more eligible procurement units in accordance with an agreement entered into between the participants. Parties under a cooperative purchasing agreement may participate in, but not be limited to the following activities:

- (a) Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.
- (b) Cooperatively use materials or services.
- (c) Commonly use or share warehousing facilities, capital equipment and other facilities.
- (d) Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.
- (e) Upon request, make available to other public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.