

Policy Number: 3-801	Policy Name: University Procurement Code - General Provisions
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 1

H. UNIVERSITY PROCUREMENT CODE

3-80I General Provisions

A. Applicability

1. This Article H (University Procurement Code) shall consist of rules prescribing procurement policies and procedures for the Arizona Board of Regents and the institutions under the Board's jurisdiction in accordance with the requirements of A.R.S. §41-2-501D and E. Such rules shall be known as the "University Procurement Code."
2. This Code shall apply only to procurements initiated after the effective date of this Article unless the parties agree to its application to procurements initiated before the effective date.
3. Except as provided in ABOR Policy 3-801A. 4. and 5. (General Provisions, Applicability) below, this Code shall apply to every expenditure of public monies, including federal assistance monies (subject to requirements of federal law as referred to in ABOR Policy 3-808H (Intergovernmental Procurement)), by the Board or any institution under its jurisdiction. This Code also applies to the disposal of university materials.
4. This Code does not apply to the following:
 - a. To either grants or contracts between the Board and either other state governmental units or other governments except as provided in ABOR Policy 3-808 (Intergovernmental Procurement).
 - b. To contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which the Board or one of its institutions is or may become a party or to a contract for special investigative services for law enforcement purposes.

Policy Number: 3-801	Policy Name: University Procurement Code - General Provisions	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 2	

- c. To agreements negotiated by legal counsel representing the Board or a university in settlement of litigation or threatened litigation.
 - d. To internal cooperative agreements or consortium agreements existing solely between and among the Board and/or any institution under the jurisdiction of the Board.
 - e. To items purchased by a university for resale.
5. Nothing in this Code shall prevent the Board or its institutions from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

B. Written Determinations

- 1. Written determinations required by this Code shall be filed and retained in the appropriate official records file maintained by each university relative to the solicitation or contract to which the determination refers.
- 2. Each written determination shall specify the reasons for the determination made.

C. Definitions

In this Code:

- 1. "Architect Services" means those professional architect services that are within the scope of architectural practice as provided in A.R.S., Title 32, Chapter 1.
- 2. "Board" means the Arizona Board of Regents.
- 3. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, limited liability company or any other private legal entity.

Policy Number: 3-801	Policy Name: University Procurement Code - General Provisions
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 3

4. "Change Order" means a written order signed by a procurement officer which directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.
5. "Code" means the University Procurement Code.
6. "Construction":
 - a. means the process of building, altering, repairing, improving, demolishing or site preparation for any public structure or building, or other public improvements of any kind to any public real property.
 - b. does not include:
 - (1) the routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
 - (2) the investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.
7. "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.

Policy Number: 3-801	Policy Name: University Procurement Code - General Provisions
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 4

- d. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
8. "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 university, 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.
 9. "Contract" means all types of agreements entered into by the Board, regardless of what they may be called, for the procurement of materials, services, or construction or construction services, or the disposal of materials.
 10. "Contract Modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
 11. "Contractor" means any person who has a contract with the Board.
 12. "Counsel" means Counsel to the Arizona Board of Regents.
 13. "Data" means documented information, regardless of form or characteristic.
 14. "Days" means calendar days as computed pursuant to A.R.S. §1-243.

Policy Number: 3-801	Policy Name: University Procurement Code - General Provisions
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 5

15. "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.

16. "Design-Build" means a project delivery method in which:
 - a. There is a single contract for design services and construction services.
 - b. Design and construction of the project may be in sequential phases or concurrent phases.
 - c. Finance services, maintenance services, operations services, design services, preconstruction services and other related services may be included.

17. "Design Consultant" means a person providing the services of an architect, engineer, land surveyor, assayer, geologist, interior design consultant, and/or landscape architect within the scope of the practice of those respective professional services but does not include special or consulting services not required for the design of the project.

18. "Design Requirements":
 - a. means at a minimum the university's written description of the project or service to be procured, including:

Policy Number: 3-801	Policy Name: University Procurement Code - General Provisions	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 6	

- (1) The required features, functions, characteristics, qualities and properties, including, when applicable, programming, planning, and site and building development guidelines.
- (2) The anticipated schedule, including start, duration and completion.
- (3) The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.

b. may include:

- (1) Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by an architect or engineer, as appropriate, who is registered pursuant to A.R.S. §32-121.
- (2) Additional design information or documents that the university elects to include.

19. "Design Services" means architect services, engineer services or landscape architect services.
20. "Designee" means a duly authorized representative of a university president.
21. "Employee" means an individual drawing a salary or wage from a university or from the Board, whether elected or not, and any noncompensated individual performing personal services for any university or the Board.
22. "Engineer Services" means those professional engineer services that are within the scope of engineering practice as provided in A.R.S., Title 32, Chapter 1.

Policy Number: 3-801	Policy Name: University Procurement Code - General Provisions
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 7

23. "Finance Services" means financing for a construction services project.
24. "Grant" means the furnishing by the State, the Board or an institution under the jurisdiction of the Board 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 secure 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.
25. "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.
26. "Landscape Architect Services" means those professional landscape architect services that are within the scope of landscape architectural practice as provided in A.R.S., Title 32, Chapter 1.
27. "Maintenance Services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.
28. "Materials"
 - a. means all property, including equipment, supplies, printing, insurance and leases of property.
 - b. does not include land or a permanent interest in land or real property.

Policy Number: 3-801	Policy Name: University Procurement Code - General Provisions
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 8

29. "Operations Services" means routine operation of existing facilities, structures, buildings or real property.
30. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.
31. "Preconstruction Services" means advice during the design phase.
32. "President" or "university president" means the president of a university or the executive director of the central office of the Board.
33. "Procurement":
 - a. means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services.
 - b. includes all functions that pertain to obtaining of any materials, services, construction, or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
34. "Procurement officer" means a university's procurement officer as designated by its president. For any university, the procurement officer may differ depending upon the type of procurement.
35. "Professional Design Services" means the services of a design consultant or a professional programmer.
36. "Professional Services" means architect services, engineer services, landscape architect services, assayer services, geologist services and land surveying services and any combination of those services.
37. "Responsible bidder or offeror" means a person who has the capability, including necessary experience, to perform the contract

Policy Number: 3-801	Policy Name: University Procurement Code - General Provisions
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 9

requirements; who has the integrity and reliability which will ensure good faith performance and appropriate quality of the materials, services, construction or construction services, to be provided; and who is in compliance with any and all licensing requirements of the State of Arizona.

38. "Responsive bidder or offeror" means a person who submits a bid which conforms in all material respects to the invitation for bids or request for proposals.
39. "Services"
- a. means the furnishing of labor, time or effort by a contractor which does not involve the delivery of a specific end product other than required reports and performance.
 - b. does not include employment agreements or collective bargaining agreements.
40. "Small business" means a concern, including its affiliates, which is independently owned and operated and which either (a) employs one hundred full-time employees or fewer, or (b) had gross annual receipts of four million dollars or less in its last fiscal year.
41. "Specific single project" means one or more facilities at a single location, at a common location or, if for a single purpose, at multiple locations.
42. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this State except the Board and the institutions under its jurisdiction.
43. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as part of a contract with a university.

Policy Number: 3-801	Policy Name: University Procurement Code - General Provisions
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 10

44. "University" means an institution governed by and under the jurisdiction of the Board. The term also refers to the Central Office staff of the Arizona Board of Regents to the extent that the Central Office is directly involved in procurement activities on behalf of the Board or the universities.

D. Miscellaneous Provisions

1. The term "may" denotes the permissive. The term "shall" denotes the imperative.
2. To the extent that the provisions of this Code are inconsistent with or conflict with other policies of the Board, the provisions of this Code shall control.
3. 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 supplement the provisions of this Code.
4. A university president may designate an individual or individuals to act on behalf of the procurement officer in the absence or unavailability of such officer.

Policy Number: 3-802	Policy Name: Procurement Authority
Policy Revision Dates: 6/2006, 4/96, 7/85, 12/84	Page 1

3-802 Procurement Authority

A. Authority of Procurement Officer

1. The procurement officer at each university functions under the direction of the university president or the president's designee and has the authority to commit university funds for the procurement of materials, services, construction and construction services on behalf of the university and the Arizona Board of Regents.
2. The procurement officer at each university shall promulgate written procedures, consistent with this Code and other Board policies, governing the procurement and management of materials, services, construction and construction services to be procured by the university and the disposal of materials. Such procedures are subject to review and/or modification by the Board at its discretion.
3. Notwithstanding ABOR Policy 3-802A. 1. and 2., (Procurement Authority, Authority of Procurement Officer), the authority of the procurement officer is subject to such limitations as may exist in other Board policies.
4. The procurement officer at each university has the authority to determine that specifications are appropriate for the intended purpose.

B. Authority to Pay for Services

1. Services have an aggregate cost of \$50,000 or greater procured under this Code, including services described in ABOR Policy 3-803.E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel, shall not be made unless pursuant to a fully approved written contract.
2. Payment for any services having an aggregate cost less than \$50,000 shall be made consistent with established university procurement policies..

Policy Number: 3-802	Policy Name: Procurement Authority
Policy Revision Dates: 6/2006, 4/96, 7/85, 12/84	Page 2

C. Impact of Rules Promulgated under Code

1. Except by mutual consent of the parties, no rules promulgated by the Board under this Code may change any commitment, right or obligation of the Board or a university or of a contractor under contract in existence on the effective date of the rule.
2. Except by mutual consent of the parties, no procedure promulgated by any procurement officer pursuant to ABOR Policy 3-802A.2. (Procurement Authority, Authority of Procurement Officer) may change any commitment, right or obligation of the Board or a university or of a contractor under a contract in existence on the effective date of the procedure.

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 1	

3-803 Bidding and Source Selection Procedures

A. Definitions

In ABOR Policies 3-803 (Bidding and Source Selection Procedures and 3-804 (Professional Services and Construction Services Procurement:

1. "Bidder prequalification" means determining, in accordance with procedures adopted by a procurement officer consistent with this Code, that a prospective bidder or offeror satisfies the criteria established for being included on a university bidder's list.
2. "Bid sample" means a sample to be furnished by bidder to show the characteristics of the item offered in the bid.
3. "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of this Code, and a fee, if provided in the contract.
4. "Discussions" as used in source selection means negotiation during which the seller or buyer may alter or otherwise change the terms, price or other provisions of the proposed contract. Discussions can be conducted under competitive sealed proposals procurements, request for qualifications procurements, sole source procurements and emergency procurements; such discussions are not permissible under competitive sealed bidding except to the extent allowed in the first phase of multi-step bidding.
5. "Established catalog price" means the price included in a catalog, price list, schedule or other form that:
 - a. Is regularly maintained by a manufacturer, distributor or contractor.
 - b. Is either published or otherwise available for inspection by customers.

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 2	

- c. States prices at which sales are currently or last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.
6. "Invitation for bids" means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in ABOR Policy 3-803.B (Bidding and Source Selection Procedures, Competitive Sealed Bidding).
7. "Multi-step sealed bidding" means a two-phase process consisting of a technical first phase consisting of one or more steps in which bidders submit unpriced technical offers to be evaluated by the university, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
8. "Offer" means a proposal or submission of qualifications, as applicable, when a procurement is made by a source selection method other than competitive sealed bidding.
9. "Offeror" means a person submitting a proposal or statement of qualifications, as applicable, when a procurement is made by a source selection method other than competitive sealed bidding.
10. "Opening" means the date and time set for unsealing bids, receipt of unpriced technical offers in multi-step bidding, or receipt of proposals and competitive sealed proposals.
11. "Paper" means newspaper, high grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic materials containing not more than ten percent by weight or volume of non-cellulosic material such as laminates, binders, coatings or saturates.
12. "Paper Product" means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten percent by weight

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 3	

or volume of noncellulosic materials such as laminates, binders, coatings or saturates.

13. "Post-Consumer Material" means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer materials does not include discards from industrial or manufacturing processes.
14. "Purchase description" means the words used in a solicitation to describe the materials, services, construction or construction services for purchase and includes plans and specifications attached to, or made a part of, the solicitation.
15. "Recycled Paper" means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least forty percent recovered wastepaper with ten percent of that being post-consumer material.
16. "Request for proposals" means all documents, whether attached or incorporated by reference, which are used in soliciting proposals in accordance with procedures prescribed in ABOR Policy 3-803 C (Bidding and Source Selection Procedures, Competitive Sealed Proposals) or ABOR Policy 3-804B.6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition).
17. "Request for Qualifications" means all documents, whether attached or incorporated by reference, which are used in soliciting statements of qualifications in accordance with procedures prescribed in ABOR Policy 3-803E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel), ABOR Policy 3-804B.3.b (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services, Definition), or any other appropriate provision of the University Procurement Code.

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 4	

18. "Requirements contract" means a term contract covering estimated quantities of materials or services or indefinite quantities of job-order-contracting construction services, or maximum and/or minimum quantities and with delivery on demand.
19. "Solicitation" means an invitation for bids, a request for proposals, a request for quotations, a request for qualifications, or any other requests by a university for the purpose of soliciting bids or proposals or qualifications to perform a contract to be entered into by the Board.
20. "Technical offer" means solicited or unsolicited submission of written information from a prospective contractor that states how that party intends to perform certain work; its technical and business qualifications; and its proposed delivery, warranty, and other terms and conditions as those might differ from or supplement the university's solicitation requirements. It shall include such pricing information as may be required.
21. "Technical Proposal" means a technical proposal under ABOR Policy 3-804B.6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition).
22. "Wastepaper" means recyclable paper and paperboard, including high grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

B. Competitive Sealed Bidding

1. Contracts shall be awarded by competitive sealed bidding except as provided by this code in accordance with the following sections:
 - a. 3-803C - Competitive Sealed Proposals
 - b. 3-803D.1 - Procurement not exceeding \$50,000
 - c. 3-803D.2 - Sole Source Procurement

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 5	

- d. 3-803D.3 - Emergency Procurement
- e. 3-803D.4. - Procurement of livestock, animals, feed, etc.
- f. 3-803D.5. - Procurement of materials at auction or at commodity index - excluding real property
- g. 3-803D.6. - Simplified construction procurement program
- h. 3-803E.1 - Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel
- i. 3-804B - Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services
- j. 3-808G - ARCORS and Arizona Industries for the Blind

2. An invitation for bids shall be issued and shall include a purchase description and contractual terms and conditions applicable to the procurement.
3. Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids. The notice may include publication one (1) or more times in a newspaper of general circulation a reasonable time before bid opening. If the invitation for bids is for the procurement of services other than those described in ABOR Policy 3-803E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel) below,

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 6	

the notice shall include publication in a newspaper of general circulation within this state. The publication shall be not less than two (2) weeks before bid opening. The notice may also be posted at a designated site on a worldwide public network of interconnected computers.

4. Bids shall be opened publicly, in the presence of one or more witnesses, at the time, date and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be specified by the procurement officer, together with the name of each bidder shall be recorded. This record shall be open to public inspection at the bid opening in a manner prescribed by the procurement officer. The bids shall not be open for public inspection until after a contract is awarded. To the extent the bidder designates and the university concurs, trade secrets or other proprietary data contained in the bid documents shall be maintained as confidential, all other information contained in such documents shall become public information following contract award.

The procurement officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidder in writing what portions of the bids will be disclosed and that unless the bidder protests under ABOR Policy 3-809 (Legal Remedies) of this Code the bids will be disclosed. After a contract is awarded, the bids shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

5. Bids shall be evaluated based on the requirements set forth in the invitation for bids. The university 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, including the weighting of identified criteria. Evaluation criteria shall not be used for construction and no criteria may be used in bid evaluation that are not set forth in the invitation for bids.

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 7	

6. Correction or withdrawal of erroneous bids before or after bid opening, based on bid mistakes, may be permitted by the procurement officer in accordance with procedures promulgated by the procurement officer. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interests of a university or fair competition shall be permitted. Except as otherwise provided by this Code, 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 officer. Mistakes shall not be corrected after the award of the contract.

7. The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the lowest bidder. If all bids for a construction project exceed available monies as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such monies by more than five percent (5%), the procurement officer may in situations in which time or economic considerations preclude resolicitation of work of a reduced scope negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, to bring the bid within the amount of available monies.

8. The multi-step sealed bidding method may be used if the procurement officer determines that it is not practical to initially prepare a definitive purchase description which is suitable to permit an award based on competitive sealed bidding. An invitation for bids may be issued requesting the submission of technical offers to be followed by an invitation for bids limited to those bidders whose offers are determined to be technically acceptable under the criteria set forth in the first solicitation, except that the multistep sealed bidding method may not be used for construction contracts.

9. If the price of a recycled paper product which conforms to specifications is within five percent(5%) of a low bid product which

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 8

is not recycled and the recycled product bidder is otherwise the lowest responsible and responsive bidder, the award shall be made to the bidder offering the recycled product. The university may adopt rules requiring a five percent (5%) preference for other products made from recycled materials.

C. Competitive Sealed Proposals

1. If the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the university, a contract for materials or services may be entered into by competitive sealed proposals. This subsection does not apply to procurement of construction or construction services or specific professional services pursuant to ABOR Policy 3-804.B.3.a (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition). Construction, construction services and design services shall be procured as prescribed in ABOR Policy 3-804A (Professional Services and Construction Services Procurement, Project Delivery Methods for Design Services and Construction Services; Report)
 - a. Factors to be considered in determining whether competitive sealed bidding is not practicable include:
 - (1) Whether the contract needs to be other than a fixed price type;
 - (2) Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
 - (3) Whether offerors may need to be afforded the opportunity to revise their proposals, including price;
 - (4) Whether an award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 9	

offering to the university. Quality factors include technical and performance capability and the content of the technical proposal; and

- (5) Whether the primary consideration in determining award may not be price.
- b. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:
- (1) If prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the university; and
 - (2) Whether the factors listed in ABOR Policy 3-803C.1.a.(2) through (4) (Bidding and Source Selection Procedures, Competitive Sealed Proposals) are desirable in conducting a procurement rather than necessary.
2. Proposals shall be solicited through a request for proposals.
 3. Adequate public notice of the request for proposals shall be given in the same manner as provided in ABOR Policy 3-803B.3 (Bidding and Source Selection Procedures, Competitive Sealed Bidding).
 4. Proposals shall be opened publicly at the time, date and place designated in the request for proposals. The name of each offeror, and such other relevant information as is specified by the procurement officer, shall be publicly read and recorded. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall be open for public inspection after contract award. To the extent that the offeror designates and the university concurs, trade secrets or other proprietary data contained in the offer documents shall be maintained as confidential, all other information contained in such documents shall become public information following contract award.

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 10	

The procurement officer shall examine the offers to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the offeror in writing what portions of the offer will be disclosed and that unless the offeror protests under ABOR Policy 3-809 (Legal Remedies) the offer will be disclosed. After a contract is awarded, the offers shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

5. The request for proposals shall state all of the evaluation factors, including price, and their relative importance. Specific numerical weighting is not required, but may be used.

6. As provided in the request for proposals, and under procedures promulgated by the procurement officer, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before award for the purpose of obtaining best and final offers. If discussions are conducted, all offerors who have submitted proposals that are determined by the procurement officer to be in the competitive range shall be invited to submit a final revised proposal. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The award shall be made to the responsive and responsible offeror whose proposal is determined to be the most advantageous to a university taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal. The contract file shall contain a written determination showing the basis on which the award is made.

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 11	

7. Notwithstanding any other provision in this Article H (University Procurement Code), a contract for the services of any financial consultant under circumstances not covered in ABOR Policy 3-803.D (Bidding and Source Selection Procedures , Exceptions to Competitive Selection) shall be awarded through competitive sealed proposals.
 - a. Prospective financial consultants may be prequalified pursuant to ABOR Policy 3-803.F.3 (Bidding and Source Selection Procedures, Additional Provisions Related to Source Selection). The universities may use a uniform questionnaire for this purpose.
 - b. For any such contract, a university may use another method of procurement consistent with this Code upon prior approval of the Board.

D. Exceptions to Competitive Selection

1. Procurement Not Exceeding \$50,000

Any procurement which does not exceed an aggregate dollar amount of fifty thousand dollars may be made in accordance with procedures promulgated by the procurement officer, except that the procurements shall be made with such competition as is practicable under the circumstances. Any procurement which does not exceed the aggregate dollar amount of fifty thousand dollars shall be restricted, if practicable, to small businesses. The procurement officer shall rotate the small businesses solicited to compete for any procurement of fifty thousand dollars or less. If it is impracticable to restrict a particular procurement to small businesses, the procurement officer shall make a determination setting forth the reasons and place it in the contract file. Procurement requirements shall not be artificially divided or fragmented so as to constitute a purchase under this subsection and to circumvent the source selection procedures required by ABOR Policy 3-803.B (Bidding and Source Selection Procedures, Competitive Sealed Bidding) or ABOR Policy 3-803.C (Bidding and Source Selection Procedures,

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 12	

Competitive Sealed Proposals) or ABOR Policy 3-804.B (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services, Definition).

2. Sole Source Procurement

A contract may be awarded for a material, service or construction item without competition if the procurement officer determines in writing that there is only one source for the required material, service or construction item. The procurement officer may require the submission of cost or pricing data in connection with an award under ABOR Policy 3-803D.2 (Bidding and Source Selection Procedures, Exceptions to Competitive Selection, Sole Source Procurement). Sole source procurement shall be avoided except when no reasonable alternative source exists. A written determination of the basis for the sole source procurement shall be included in the contract file.

3. Emergency Procurements

Notwithstanding any other provisions of the Code, a university president or the president's designee may make emergency procurements if there exists a threat to public health, welfare or safety, or if a situation exists which makes compliance with ABOR Policy 3-803B (Bidding and Source Selection Procedures, Competitive Sealed Bidding), ABOR Policy 3-803C (Bidding and Source Selection Procedures, Competitive Sealed Proposals) or ABOR Policy 3-804B (Professional Services, and Construction Services Procurement, Procurement of Professional Services and Construction Services) impracticable, unnecessary or contrary to the public interest, except that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

4. Procurement of Livestock, Animals, Feed, etc.

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 13	

The procurement officer shall be authorized to purchase livestock, animals, and feed through "order buyers" who may attend auctions in order to purchase cattle that meet agreed upon size and other specifications and based upon the current market value of the cattle at the time of purchase.

5. Procurement of material at auction or at commodity index - excluding real property

The procurement officer shall be authorized to purchase material where the price of the material is established by auction or by a recognized, published commodity index, and where it is determined that competitive bidding is not practicable. Notwithstanding this provision, real property must be purchased in accordance with the requirements of ABOR Policy 7-203 (Purchases of Real Property).

6. Simplified Construction Procurement Program (A.R.S. §41-2535)

A procurement involving construction not exceeding one hundred thousand dollars (\$100,000) may be made pursuant to rules adopted by the procurement officer in accordance with this section which shall be known as the simplified construction procurement program. These rules shall require that:

- a. A list be maintained of firms/persons who desire to receive solicitations to bid on construction projects; additions shall be permitted throughout the year.
- b. The list of firms/persons be available for public inspection.
- c. Agreements for construction be on forms approved by the procurement officer.
- d. A performance bond and a payment bond be posted as required by ABOR Policy 3-804D (Professional Services Construction and Construction Services, Contract Performance and Payment Bonds).

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 14	

- e. All information submitted by bidders pursuant to this section be confidential according to ABOR Policy 3-803B.4 (Bidding and Source Selection Procedures, Competitive Sealed Bidding).
- f. All bids for construction be opened at a public opening.
- g. All persons desiring to submit bids be treated equitably and the information related to each project be available to all eligible persons.
- h. Competition for construction projects under the simplified construction procurement program be encouraged to the maximum extent possible.

7. Record of Procurement Actions

Each university procurement officer shall maintain a record listing all sole source and emergency procurements in excess of \$50,000 for a minimum of five (5) years. The records shall be available for public inspection and shall contain:

- a. Each contractor's name.
- b. The amount and type of each contract.
- c. A listing of the materials, services, construction or construction services procured for each contract.

E. Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel

- 1. The services of clergy, Certified Public Accounts, financial advisors and consultants, physicians, dentists and legal counsel shall be procured in accordance with ABOR Policy 3-803E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel), except as

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 15	

authorized under ABOR Policy 3-803D (Bidding and Source Selection Procedures, Exceptions to Competitive Selection).

2. Persons engaged in providing the services specified in ABOR Policy 3-803E.1 (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel) above may submit statements of qualifications and expressions of interest in providing such types of services. The procurement officer may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.
3. Adequate notice of the need for such services shall be given by the procurement officer through a request for proposals. The request for proposals shall describe the services required and list the type of information and data required of each offeror.
4. The selection committee may conduct discussions with any offeror who submits a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
5. The award shall be made to the offeror determined in writing by the selection committee to be best qualified based on the evaluation factors set forth in the request for proposals and after a written determination that the compensation is fair and reasonable. Selection may be made pursuant to the provisions of this ABOR Policy 3-803E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel) without requiring priced proposals, but if price is included in proposals submitted, no contract may be awarded solely on the basis of price. Written notice of award shall be public information and made part of the contract file.
6. No contract for the services of legal counsel shall be awarded without the prior approval of the Board or Counsel to the Board.

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 16	

7. ABOR Policy 3-803E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel) shall not preclude any university or the Board from employing professional personnel as employees of a university under the applicable conditions of service policies maintained by the Board.

F. Additional Provisions Related to Source Selection

1. An invitation for bids, a request for proposals, a request for qualifications, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation if it is in the best interest of the university. The reasons for the cancellation or rejection shall be made a part of the contract file.
2. Responsibility of Bidders and Offerors
 - a. A bidder or offeror shall be required to provide written certification of compliance with applicable Arizona licensing requirements with submission of a bid or proposal.
 - b. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with procedures promulgated 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 shall be grounds for a determination of nonresponsibility with respect to the bidder or offeror. A finding of nonresponsibility shall not be construed as a violation of the rights of any person.
 - c. Except for the certification required in subparagraph a, information furnished by a bidder or offeror pursuant to this ABOR Policy 3-803F.2 (Bidding and Source Selection Procedures, Additional Provisions Related to Source Selection) may only be disclosed by the university procurement office, university legal counsel, the university

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 17	

president or the Board of Regents with prior written consent by the bidder or offeror except to law enforcement agencies.

3. Prospective contractors may be prequalified for particular types of materials, services and construction. Prospective contractors have a continuing duty to provide the university with information on any material change affecting the basis of their prequalification. Solicitation mailing lists of potential contractors shall include the prequalified prospective contractors. A prospective contractor may not be denied award of a contract simply because such prospective contractor was not prequalified. The fact that a prospective contractor has been prequalified does not necessarily represent the finding of responsibility.
4. Bid guaranty and performance bonds or other security to guarantee faithful bid and contract performance may be required for material or service contracts as the procurement officer deems advisable to protect the interests of the university. Any such requirements must be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of bidder responsibility.
5. Cost and Pricing Data
 - a. 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. A contractor shall, except as otherwise provided in ABOR Policy 3-803F.5.c. (Bidding and Source Selection Procedures, Additional Provisions Related to Source Selection, Cost and Price Data) below, submit current cost or pricing data and shall certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually determined specified date before the date of either:
 - (1) The pricing of any contract awarded by competitive sealed proposals or pursuant to the sole source

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 18	

procurement authority, if the total contract price is expected to exceed an amount established by university procedures; or

- (2) The pricing of any change order or contract modification which is expected to exceed an amount established by university procedures.
- b. Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to the university shall be adjusted to exclude any significant amounts by which the university finds that the price was increased because the contractor furnished cost or pricing data which was inaccurate, incomplete or not current as of the date agreed on between the parties. Such adjustment by the university may include profit or fee.
- c. The requirements of ABOR Policy 3-803F.5 (Bidding and Source Selection Procedures, Additional Provisions Related to Source Selection, Cost and Price Data). need not be applied to contracts if any of the following apply:
- (1) The contract price is based on adequate price competition.
 - (2) The contract price is based on established catalog prices or market prices.
 - (3) Contract prices are set by law or regulation.
 - (4) It is determined in writing in accordance with university procedures that the requirements of this section may be waived, and the reasons for the waiver are stated in writing.
6. Types of Contracts

Subject to the limitations of this paragraph, any type of contract which will promote the best interests of the university may be used,

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 19

except that the use of a cost-plus-a-percentage-of- cost contract is prohibited. A cost-reimbursement contract may be used only if a determination is made in writing that such contract is likely to be less costly to the university than any other or that it is impracticable to obtain the materials, services, construction or construction services required except under such a contract.

7. Except with respect to firm-price contracts, no contract type may be used unless it is determined in writing by the procurement officer that the proposed contractor's accounting system is adequate to allocate costs.
8. Multi-Term Contracts
 - a. Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time up to five (5) years and a contract for job-order-contracting construction services may be entered into for a period of time up to five (5) years, as deemed to be in the best interest of a university, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. A contract may be entered into for materials or services for a period of time exceeding five (5) years if the university president or a designee determines in writing that such a contract would be advantageous to a university. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.
 - b. Before the use of a multi-term contract, it shall be determined in writing that:
 - (1) Estimated requirements cover the period of the contract and are reasonable and continuing.
 - (2) Such a contract will serve the best interests of the university by encouraging effective competition or

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 20	

otherwise promoting economies in university procurement.

- c. If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials, services or job-order-contracting construction services delivered under the contract or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations available for such purpose.
9. A university may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by a university.
10. Right to Audit Records
- a. A university may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for five (5) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the procurement officer.
 - b. A university is entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the prime contract and by the subcontractor for a period of five (5) years from the date of final payment under the

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 21	

subcontract, unless a shorter period is otherwise authorized in writing by the procurement officer.

11. 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 university legal counsel and to the Counsel for the Board of Regents, who shall inform the Attorney General.
12. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the State Department of Library, Archives and Public Records.
13. A change order with respect to a contract for construction or construction services shall only be executed after applicable internal procedures set forth in Article A of Chapter VII (Buildings, Infrastructure and Land, Capital Planning and Development Process) have been complied with by the university.

G. Public-Private Technology Financing Partnership Contracts

1. A university may enter into public-private partnership contracts to finance the technology needs of the university. The funding for services under a public-private partnership contract entered into pursuant ABOR Policy 3-803 (Bidding and Source Selection Procedures) shall be contingent on and computed according to established performance standards and shall be attributable to the successful implementation of the technology program for the period specified in the contract. A university may issue requests for information and requests for proposals to solicit private partners that are interested in providing programs under a contract entered into pursuant to this section.
2. Each request for proposals issued pursuant to ABOR Policy 3-803 (Bidding and Source Selection Procedures) shall require each private partner to propose specific performance improvements and measurement approaches to be used to measure the value delivered by the vendor technology solution. The university shall

Policy Number: 3-803	Policy Name: Bidding and Source Selection Procedures	
Policy Revision Dates: 6/2006, 9/00, 4/96, 5/89, 2/88, 7/85, 4/85, 12/84	Page 22	

include an assessment of the proposed value of the vendor technology solution in its evaluation criteria to select the best value solution for the university.

3. A contract entered into between a university and an automated systems vendor shall provide for payment of fees on a contractually specific amount based on the achievement of measured performance improvements that are mutually agreed to by the contractor and the university and monies for payment of these fees are not subject to legislative appropriation. The following are subject to review and approval by the president of the university:
 - a. The terms of contracts entered into pursuant to ABOR Policy 3-803 (Bidding and Source Selection Procedures) relating to the measurement of the performance improvement attributable to the vendor technology program.
 - b. Payment of fees based on the achievement of the established performance measures.

4. Before a public-private partnership contract is awarded pursuant to this Section, the Joint Legislative Budget Committee staff shall be consulted with regard to the potential fiscal impact of the contract to the state. If the Joint Legislative Budget Committee staff finds a significant negative fiscal impact to the state, the staff shall report its findings to the Joint Legislative Budget Committee.

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 1

3-804 Professional Services Construction and Construction Services Procurement

A. Project Delivery Methods

1. A university may procure design services, construction and construction services, as applicable, under any of the following project delivery methods:
 - a. Design-bid-build.
 - b. Construction-manager-at-risk.
 - c. Design-build.
 - d. Job-order-contracting.
2. For the Design-bid-build project delivery method, the procurement officer shall procure:
 - a. Design services pursuant to ABOR Policy 3-804B (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), except as otherwise provided in ABOR Policy 3-803D.1, D.2, and D.3 (Bidding and Source Selection Procedures, Exceptions to Competitive Selection, Procurement Not Exceeding \$50,000, Sole Source Procurement, Emergency Procurements).
 - b. Construction by competitive sealed bidding, except as otherwise provided in ABOR Policy 3-803D.1, D.2, D.3. and D.6 (Bidding and Source Selection Procedures, Exceptions to Competitive Selection, Procurement Not Exceeding \$50,000, Sole Source Procurement, Emergency Procurements, Simplified Construction Procurement Program).
3. The procurement officer shall procure construction services under the Construction-manager-at-risk, Design-build and

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 2

Job-order-contracting project delivery methods pursuant to ABOR Policy 3-804B (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), except as otherwise provided in ABOR Policy 3-803D.1, D.2, and D.3 (Bidding and Source Selection Procedures, Exceptions to Competitive Selection, Procurement Not Exceeding \$50,000, Sole Source Procurement, Emergency Procurements).

4. The procurement officer shall procure design services relating to a Construction-manager-at-risk construction services project pursuant to ABOR Policy 3-804B (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), except as otherwise provided in ABOR Policy 3-803D.1, D.2, and D.3 (Bidding and Source Selection Procedures, Exceptions to Competitive Selection, Procurement Not Exceeding \$50,000, Sole Source Procurement, Emergency Procurements).
5. For Job-order-contracting construction services projects, the procurement officer shall procure any design services needed for the Job-order-contracting construction services projects and not included in the job-order contracting construction services contract pursuant to ABOR Policy 3-804B (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), except as otherwise provided in ABOR Policy 3-803D.1, D.2, and D.3 (Bidding and Source Selection Procedures, Exceptions to Competitive Selection, Procurement Not Exceeding \$50,000, Sole Source Procurement, Emergency Procurements).

B. Procurement of Professional Services and Construction Services; Definition

1. Professional services, Construction-manager-at-risk construction services, Design-build construction services and Job-order-contracting construction services shall be procured as provided in this Subsection except as authorized by ABOR Policy

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 3

3-803D.1, D.2 and D.3 (Bidding and Source Selection Procedures, Exceptions to Competitive Selection, Procurement Not Exceeding \$50,000, Sole Source Procurement, Emergency Procurements).

2. A university shall provide notice, as determined by the procurement officer, of each procurement of professional services or construction services and shall award contracts on the basis of demonstrated competence and qualifications for the type of professional services or construction services pursuant to procedures prescribed in ABOR Policy 3-804.B (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition)-
3. In the procurement of professional services or construction services pursuant to this Section:
 - a. For procurement of professional services if the contract is for professional services by an architect or architect firm and the contract amount is two hundred fifty thousand dollars (\$250,000) or less or is for professional services by a person or firm other than an architect or an architect firm and the contract amount is five hundred thousand dollars (\$500,000) or less, the procurement officer shall encourage persons or firms engaged in the lawful practice of the profession to submit annually a statement of qualifications and experience. The procurement officer shall initiate an appropriately qualified selection committee for each procurement, which may include one or more contracts, as determined by the procurement officer. The selection committee shall evaluate current statements of qualifications and experience on file with the university, together with those that may be submitted by other firms regarding the procurement. If possible, the selection committee shall conduct interviews with at least three (3) persons or firms regarding the procurement and the relative methods of furnishing the required services and, if possible, shall select, in order of preference and based on criteria established and published by the selection committee, a separate final list for each

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 4	

contract being procured of at least three (3) of the persons or firms deemed to be the most qualified to provide the services required. The selection committee shall base the selection of each final list and the order of preference on demonstrated competence and qualifications only.

The university and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this paragraph, including the selection of persons or firms to be interviewed, the selection of persons or firms to be on a final list, in determining the order of preference of persons and firms on a final list or for any other purpose in the selection process. For each contract for professional services included in the procurement, the procurement officer shall enter into separate negotiations for the contract with the highest qualified person or firm on the final list for the contract. The negotiations shall include consideration of compensation and other contract terms that the procurement officer determines to be fair and reasonable to the university.

In making this determination, the procurement officer shall take into account the estimated value, the scope, the complexity and the nature of the professional services to be rendered. If the procurement officer is unable to negotiate a satisfactory contract with the highest qualified person or firm on the final list for the contract at a price and on other contract terms the procurement officer determines to be fair and reasonable to the university, the procurement officer shall formally terminate negotiations with that person or firm.

The procurement officer may undertake negotiations with the next most qualified person or firm on the final list for the contract in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list for the contract.

- b. For professional services if the contract amount is more than two hundred fifty thousand dollars (\$250,000) for professional services by an architect or architect firm or five

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 5

hundred thousand dollars (\$500,000) for professional services by a person or firm other than an architect or architect firm and for all construction services, the university shall follow the procedure prescribed in ABOR Policy 3-804B.b., c., d., e., f., g., h., i., and j., (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition). Notwithstanding ABOR Policy 3-804B.a (Professional Services and Construction Services Procurement, Procurement of Professions Services and Construction Services; Definition)., for professional services otherwise subject to ABOR Policy 3-804B.a (Professional Services and Construction Services Procurement, Procurement of Professions Services and Construction Services; Definition), the university may elect to follow the procedures prescribed in ABOR Policy 3-804B.b., c., d., e., f., g., h., i., and j., (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition). The procurement officer shall initiate an appropriate qualified selection committee for each request for qualifications, as determined by the procurement officer. If procuring professional services, the procurement officer shall determine the number and qualifications of the selection committee members. A selection committee for the procurement of construction services shall not have more than seven (7) members and shall include at least one (1) person who is a senior management employee of A licensed contractor and one person who is an architect or an engineer who is registered pursuant to A.R.S. §32-121. These members may be employees of the university or outside consultants. Outside contractors, architects and engineers serving on a selection committee shall not receive compensation from the university for performing this service, but the university may elect to reimburse outside contractors, architects and engineers for travel, lodging and other expenses incurred in connection with service on a selection committee. A person who is a member of a selection committee shall not be a

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 6	

contractor under a contract awarded under the procurement or provide construction or construction services, materials or services under the contract. The selection committee shall:

- (1) Evaluate the statements of qualifications and performance data that are submitted in response to the university's request for qualifications.
- (2) If determined by the university and included by the university in the request for qualifications, conduct interviews with at least three (3) but not more than five (5) persons or firms as specified in the request for qualifications regarding the professional services or construction services and the relative methods of approach for furnishing the required professional services or construction services except that if multiple contracts are being procured under a single request for qualifications, the number to be interviewed shall be at least three (3) and not more than the number of contracts plus two (2).
- (3) After any interviews, in order of preference, based on the criteria and the weighting of the criteria included in the request for qualifications, select a final list for each contract of three of the persons or firms the selection committee deems to be the most qualified to provide the professional services or construction services and, in the case of a contract that will be negotiated under ABOR Policy 3-804B.5 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), rank the three (3) persons or firms on the final list in order of preference. The selection committee shall base the selection of the final list and the order of preference on demonstrated competence and qualifications only. If the request for qualifications solicited multiple contracts, the selection committee shall select a

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 7	

separate final list for each contract, except that if multiple contracts are being procured and if the request for qualifications specified that all of the multiple contracts will be awarded to a single contractor, the selection committee may select a single final list for all of the multiple contracts. . If only two (2) responsible and responsive persons or firms respond to the request for qualifications or if persons or firms withdraw from the procurement process so that there are only two (2) responsible and responsive persons or firms remaining in the procurement process, the university may elect to have the selection committee proceed with the procurement, including interviews and the final list, with those two (2) persons or firms or the university may readvertise pursuant to ABOR Policy 3-804.B.3 (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition) as the university deems necessary or appropriate. If only one (1) responsive and responsible person or firm responds to the request for qualifications or if persons or firms withdraw from the procurement process for a contract or multiple contracts to be negotiated under ABOR Policy 3-804B.5 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) so that only one (1) responsive and responsible person or firm remains in the procurement process, the university may elect to proceed with only one (1) person or firm in the procurement process and may award the contract or contracts to a single person or firm if the university determines in writing that the fee negotiated pursuant to ABOR Policy 3-804B.5 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) is fair and reasonable and either other

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 8

prospective persons or firms had a reasonable opportunity to respond or there is not adequate time for a resolicitation. If a person or firm on the final list withdraws or is removed from the procurement process and the selection committee determines that it is in the best interest of the university, the selection committee may add to the final list as the last person on the final list another person or firm that submitted qualifications and that is selected by the selection committee as the next most qualified..

- (4) Base the selection of the final list and order of preference on the final list on demonstrated competence and qualifications only.
- c. The university shall issue a request for qualifications for each contract and give adequate public notice of the request for qualifications in the same manner as provided in ABOR Policy 3-803.B.3 (Bidding and Source Selection Procedures, Competitive Sealed Bidding). The request for qualifications shall state:
- (1) the criteria to be used by the selection committee to select the person or firm to perform the professional services or the contraction services. The request for qualifications shall also state in a manner determined by the university the relative weight of the selection criteria and, if required under ABOR Policy 3-804B.3.h.(2) (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), that one of the criteria will be the person's or firm's subcontractor selection plan or procedures to implement the university's subcontractor selection plan.
 - (2) If the university will hold interviews as part of the selection process, that interviews shall be held with at

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 9

least three (3) and no more than (5) persons or firms, except that if multiple contracts are being procured under a single request for qualifications solicitation under ABOR Policy 3-804B.3 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) or a single request for qualifications and request for proposals solicitation under ABOR Policy 3-804B.3 and 6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), the number to be interviewed shall be at least three (3) and not more than the number of contracts plus two (2).

- d. A university may procure multiple contracts under a single request for qualifications procurement process under ABOR Policy 3-804B.3 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) or, for job-order contracting construction services or design-build construction services, under a single request for qualifications and request for proposals procurement process under ABOR Policy 3-804B.3 and 6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition). If a university does this:
- (1) The advertisement and the request for qualifications shall state that multiple contracts may or will be awarded, shall state the number of contracts that may or will be awarded and shall describe the services to be performed under each contract.
 - (2) There shall be a single selection process for all of the multiple contracts, except that for each contract there shall be a separate final list and a separate negotiation under ABOR Policy 3-804B.5

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 10

(Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) or a separate request for proposals competition under ABOR Policy 3-804B.6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), however, if the request for qualifications specifies that all of the multiple contracts will be awarded to a single contractor, there may be a single final list and a single negotiation for all of the multiple contracts under ABOR Policy 3-804B.5 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) or a single request for proposals competition under ABOR Policy 3-804B.6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition).

- (3) The university may award all of the multiple contracts to one contractor or may award the multiple contracts to multiple contractors.

- e. For professional services, a university may procure multiple contracts using a single request for qualifications solicitation under ABOR Policy 3-804B (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), except that professional services that are part of design-build construction services may only be procured as part of the design-build construction services procurement. Each of the multiple contracts for professional services must have a term not exceeding five (5) years and may continue in effect after the five (5) year term for professional services on projects commenced within the five (5) year term.

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 11	

- f. For job-order-contracting construction services, a university may procure multiple contracts using a single request for qualifications solicitation under ABOR Policy 3-804B.3 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) or using a single request for qualifications and request for proposals solicitation under ABOR Policy 3-804B.3 and 6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition).
- g. For construction-manager-at-risk construction services and for design-build construction services, a university may procure multiple contracts using a single request for qualifications solicitation under ABOR Policy 3-804B.3 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) or for design-build construction services using a single request for qualifications and request for proposals solicitation under ABOR Policy 3-804B.3 and 6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) but in either case only for a specific single project, portions of the specific single project shall be allocated to separate contracts.
- h. For construction-manager-at-risk construction services, design-build construction services and job-order-contracting construction services if the contract or contracts will be negotiated under ABOR Policy 3-804B.5 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) or for job-order-contracting construction services if the contract will be awarded pursuant to ABOR Policy 3-804B.6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition):

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 12

- (1) The person or firm selected to perform the construction services must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone. A qualifications and price selection may be a single step selection based on a combination of qualifications and price or a two step selection, in a two step selection, the first step shall be based on qualifications alone and the second step may be based on a combination of qualifications and price or on price alone.
- (2) The university shall include in the request for qualifications either:
 - (a) A requirement that each person or firm submit a proposed subcontractor selection plan, a requirement that the proposed subcontractor selection plan must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone and, as a selection criteria under the request for qualifications, an evaluation of each person's or firm's proposed subcontractor selection plan.
 - (b) A subcontractor selection plan adopted by the university that will apply to the person or firm that is selected to perform the construction services that requires subcontractors to be selected based on qualifications alone or on a combination of qualifications and price and not based on price alone, a requirement that each person or firm must submit a description of the procedures it proposes to use to carry out the university's subcontractor selection plan and, as a selection criteria under the request for

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 13	

qualifications, an evaluation of each person's or firm's proposed procedures to carry out the university's subcontractor selection plan.

- (3) The university shall include in its contract with the selected person or firm either:
 - (a) If the university included its subcontractor selection plan in the request for qualifications, the university's subcontractor selection plan the procedures proposed by the selected person or firms in submitting its qualifications with those modifications to the procedures as the university and the selected person or firm agree.
 - (b) If the university did not include its subcontractor selection plan in the request for qualifications, the subcontractor selection plan proposed by the selected person or firm in submitting its qualifications with those modifications as the university and the selected person or firm agree.
- (4) In making the selection of subcontractors, the person or firm selected to perform the construction services shall use the subcontractor selection plan and any procedures included in its contract.
 - i. The university and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under ABOR Policy 3-804B.3 and 4 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), including the selection of the persons or firms to be interviewed, the selection of the persons or firms to be on the final list, in determining the order of preference of

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 14	

persons or firms on the final list or for any other purpose in the selection process.

- j. For construction-manager-at-risk construction services and design-build construction services, the contract or contracts under a single request for qualifications procurement process or for design-build construction services a single request for qualifications and request for proposals procurement process shall be limited to a specific single project.
4. The procurement officer shall award a contract for professional services or construction services to one of the persons or firms on the final list for that contract prepared pursuant to ABOR Policy 3-804B.3 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) as provided in ABOR Policy 3-804B.5 or 6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), except that,
- a. if only two (2) persons or firms that the selection committee determines are qualified respond to the request for proposals pursuant to ABOR Policy 3-804B.6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) or if one of the three (3) persons or firms on the final list drops out of the selection process pursuant to ABOR Policy 3-804B.5 OR 6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition) so that only two (2) OF THE persons or firms on the final list remain, the university, as the university deems necessary or appropriate, may elect to proceed with the procurement process with the two (2) persons or firms or elect to readvertise pursuant to ABOR Policy 3-804B.3.b (Professional Services and Construction Services

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 16

with the highest qualified person or firm on the final list, at a compensation and on other contract terms the procurement officer determines to be fair and reasonable to the university, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer may undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list. If a contract for construction services is entered into pursuant to this Subsection:

- a. If the contract is for construction-manager-at-risk construction services and includes preconstruction services by the contractor or if the contract is for design-build construction services, the university shall enter into a written contract with the contractor for preconstruction services under which contract the university shall pay the contractor a fee for preconstruction services in an amount agreed by the university and the contractor, and the university shall not request or obtain a fixed price or a guaranteed maximum price for the construction from the contractor or enter into a construction contract with the contractor until after the university has entered into the written contract for preconstruction services and a preconstruction services fee.
 - b. Construction shall not commence until the university and contractor agree in writing on either a fixed price that the university will pay for the construction to be commenced or a guaranteed maximum price for the construction to be commenced.
6. As an alternative to ABOR Policy 3-804B.5 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition), the procurement officer may award design-build construction services or job-order-contracting construction services as follows:
- a. The procurement officer shall use the selection committee appointed for the request for qualifications pursuant to

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 17	

ABOR Policy 3-804B.3 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition).

- b. The procurement officer shall issue a request for proposals to the persons or firms on the final list developed pursuant to ABOR Policy 3-804B.3 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition).
- c. For design-build construction services and job-order-contracting construction services, the request for proposals shall include:
 - (1) The university's project schedule and project final design and construction budget or life cycle budget for a procurement that includes maintenance services or operations services.
 - (2) A statement that the contract or contracts will be awarded to the person or firm whose proposal receives the highest number of points under a scoring method.
 - (3) A description of the scoring method, including a list of the factors in the scoring method and the number of points allocated to each factor. The factors in the scoring method shall include:
 - (a) For Design-build construction services only, demonstrated compliance with the design requirements.
 - (b) Offeror qualifications.
 - (c) Offeror financial capacity.

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 18	

- (d) Compliance with the university's project schedule.
 - (e) For Design-build construction services only, if the request for proposals specifies that the university will spend its project budget and not more than its project budget and is seeking the best proposal for the project budget, compliance of the offeror's price or life cycle price for procurements that include maintenance services, operations services or finance services with the university's budget as prescribed in the request for proposals.
 - (f) For Design-build construction services if the request for proposals does not contain the specifications prescribed in ABOR Policy 3-804.B.6.(3)(e) and for job-order-contracting construction services, the price or life cycle price for procurements that include maintenance services, operations services or finance services.
 - (g) An offeror quality management plan.
 - (h) Other evaluation factors as determined by the university, if any.
- (4) For Design-build construction services only, the design requirements.
 - (5) A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal be responsive to the requirements in the request for proposals. For Design-build construction services, the price in the price proposal shall be a fixed price or a guaranteed maximum price.

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 19	

- (6) A statement that in applying the scoring method the selection committee will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.
- (7) If the university conducts discussions pursuant to ABOR Policy 3-804B.6.e (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition), a statement that discussions will be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.
- d. If the university determines to conduct discussions pursuant to ABOR Policy 3-804B.6.e (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition), each offeror shall submit a preliminary technical proposal to the university before the discussions are held.
- e. If determined by the university and included by the university in the request for proposals, the selection committee shall conduct discussions with all persons or firms that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and for clarification by the university. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 20	

- f. After completion of any discussions pursuant to ABOR Policy 3-804B.6.e (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition) or if no discussions are held, each offeror shall submit separately its final technical proposal and its price proposal.
- g. Before opening any price proposal, the selection committee shall open the final technical proposals, evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.
- h. After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire proposal using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.
- i. The procurement officer shall award the contract or contracts to the responsive and responsible offeror whose proposal receives the highest score under the method of scoring in the request for proposals. No other factors or criteria may be used in the evaluation.
- j. The contract or contracts file shall contain the basis on which the award is made.
- k. For Design-build construction services only, the procurement officer shall award a stipulated fee equal to a percentage, as prescribed in the request for proposals, of the university's project final design and construction budget, as prescribed in the request for proposals, but not less than two-tenths (2/10) of one percent (1%) of the project final design and construction budget to each final list offeror who provides a

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 21	

responsive, but unsuccessful, proposal. If the procurement officer does not award a contract, all responsive final list offerors shall receive the stipulated fee based on the university's estimate of the project final design and construction budget as included in the request for proposals. The procurement officer shall pay the stipulated fee to each offeror within ninety (90) days after the award of the initial contract or the decision not to award a contract. In consideration for paying the stipulated fee, the procurement officer may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful offerors. Notwithstanding the other provisions of this paragraph, an unsuccessful final list offeror may elect to waive the stipulated fee. If an unsuccessful final list offeror elects to waive the stipulated fee, the university may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the university from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipulated fee.

7. Until award and execution of a contract by a university, only the name of each person or firm on the final list developed pursuant to ABOR Policy 3-804B.3 (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition) Subsection B.3.b of this Section may be made available to the public. All other information received by the university in response to the request for qualifications or contained in the proposals shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing offerors during the selection process. The proposals shall be open to public inspection after the contract is awarded and the university has executed the contract. To the extent that the offeror designates and the university concurs, trade secrets and other proprietary data contained in a proposal remain confidential.

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 22

8. A university may cancel a request for qualifications or a request for proposals or reject in whole or in part any or all submissions of qualifications or proposals as specified in the solicitation if it is in the best interest of the university. The university shall make the reasons for cancellation or rejection part of the contract file.
9. Notwithstanding any other law:
 - a. The contractor for Design-build or Job-order-contracting construction services is not required to be registered to perform design services pursuant to A.R.S. Title 32, Chapter 1 if the person or firm actually performing the design services on behalf of the contractor is appropriately registered.
 - b. The contractor for Construction-manager-at-risk, Design-build or Job-order-contracting construction services shall be licensed to perform construction pursuant to A.R.S. Title 32, Chapter 10.
10. For Job-order-contracting construction services only:
 - a. The maximum dollar amount of an individual job order shall be one million nine hundred ninety nine thousand nine hundred ninety nine dollars (\$1,999,999). Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.
 - b. If the contractor subcontracts or intends to subcontract part or all of the work under a job order and if the Job-order construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order:
 - (1) The contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 23	

contractor to do all or part of the work under one or more job orders:

- (a) A copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid.
 - (b) A copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.
- (2) If not previously delivered to the subcontractor, the contractor has a duty to deliver promptly the following to each subcontractor invited to or that has agreed to do any of the work included in any job order:
- (a) A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.
 - (b) The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.
 - (c) The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.
11. Notwithstanding anything to the contrary in ABOR Policy, a university shall not:
- a. Enter into a contract as contractor to provide Construction-manager-at-risk construction services, Design-build construction services or Job-order-contracting construction services.
 - b. Contract with itself, with another university, with the State of Arizona or with any other governmental unit of the State of

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 24

Arizona or the federal government for the university to provide Construction-manager-at-risk construction services, Design-build construction services or Job-order-contracting construction services.

12. The prohibitions prescribed in ABOR Policy 3-804B.11 (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition) do not prohibit a university from providing construction for itself as provided by law.
13. The procurement officer shall include in each contract for construction services the full street or physical address of each separate location at which the construction will be performed and a requirement that the contractor and each subcontractor at any level include in each of its subcontracts the same address information. The contractor and each subcontractor at any level shall include in each subcontract the full street or physical address of each separate location at which construction work will be performed.

C. General Provisions

1. Any building, structure, addition or alteration of a public facility may be constructed with the use of the university's regularly employed personnel without advertising for bids provided that the total cost of the work, excluding materials and equipment previously acquired by bid, does not exceed \$25,000.
2. The provisions of ABOR Policy 3-803F (Bidding and Source Selection Procedures, Additional Provisions Related to Source Selection) shall apply to the procurement of construction services and professional services.
3. Detailed estimates of the cost of a construction project prepared for a university by a construction manager, design consultant or cost consultant shall remain confidential until after the bid opening, except when disclosed as provided in ABOR Policy 3-804B (Professional Services, Construction and Construction Services,

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 25

Procurement of Professional Services and Construction Services; Definition). The university shall advise the construction manager or the design consultant of the amount of funds available for the project.

5. A university shall issue a notice to proceed only after the contract is fully executed upon receipt of proper bonds and insurance certificates.

D. Bid Security

1. As a guarantee that the contractor will enter into a contract, bid security is required for all construction services procured under ABOR Policy 3-804B.6 (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition) and for all construction if the university estimates that the budget for construction, excluding in the case of construction services the cost of any finance services, maintenance services, operations services, preconstruction services, design services, and any other related services included in the contract, will be more than the amount established in ABOR Policy 3-803D.6 (Bidding and Source Selection Procedures, Exceptions to Competitive Selection). Bid security shall be a certified check, cashier's check or surety bond.
2. Bid security shall be submitted in the following amounts:
 - a. For Design-bid-build construction, ten percent (10%) of the contractor's bid.
 - b. For Design-build construction services awarded by competitive sealed proposals pursuant to ABOR Policy 3-804B.6 (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition), ten percent (10%) of the university's final design and construction budget for the project as stated in the request for proposals, excluding finance services, maintenance services, operating

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 26

services, preconstruction services, design services, and any other related services included in the contract.

- c. For Job-order-contracting construction services awarded by competitive sealed proposals pursuant to ABOR Policy 3-804B (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition), the amount prescribed by the university in the request for proposals, but not more than ten percent (10%) of the university's reasonably estimated budget for construction that the university believes is likely to actually be done during the first year under the contract, excluding any finance services, maintenance services, operations services, preconstruction services, design services, and any other related services included in the contract.
3. Nothing in this section prevents a university from requiring such bid security in relation to any construction contract. The surety bond shall be executed and furnished as required by A.R.S. Title 34, Chapter 2 or Chapter 6, as appropriate, and the conditions and provisions of the surety bond regarding the surety's obligations shall follow the form required by A.R.S. §34-201 or §34-606 as appropriate.
 4. If the invitation for bids or request for proposals requires security, noncompliance requires that the bid be rejected unless the procurement officer determines that the bid fails to comply in a nonsubstantial matter with the security requirements.
 5. After the bids or proposals are opened, they are irrevocable for the period stated in the invitation for bids or request for proposals, except as provided in ABOR Policy 3-803C.6 (Bidding and Source Selection Procedures, Competitive Sealed Proposals) as to bids., and ABOR Policy 3-804B.6 (Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services; Definition) as to proposals. If a bidder

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 27

is permitted to withdraw its bid before award, no action may be had against the bidder or the bid security.

E. Contract Performance and Payment Bonds

1. The following bonds or security are required and are binding on the parties to the contract if the value of a construction award exceeds the amount established by ABOR Policy 3-803D.1 (Bidding and Source Selection Procedures, Exceptions to Competitive Selection, Procurement Not Exceeding \$50,000)).
 - a. A performance bond satisfactory to the university, executed by a surety company authorized to do business in this state, in an amount equal to one hundred percent (100%) of the amount specified in the contract,
 - (1) except that, for Job-order-contracting construction services, the performance bond:
 - (a) shall cover the full amount of construction under the Job-order-contracting construction services contract,
 - (b) shall not include any design services, preconstruction services, finance services, maintenance services, operations services and other related services included in the contract,
 - (c) may be a single bond for the full term of the contract, a separate bond for each year of a multiyear contract or a separate bond for each job order, as determined by the university, and if a single bond for the full term of the contract or a separate bond for each year of a multiyear contract, shall initially be based on the university's reasonable estimate of the amount of construction that the purchasing agency believes is likely to actually be done during the

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement	
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 28	

full term of the contract or during the particular year of a multiyear contract

- (2) except that for Construction-manager-at-risk construction services, and Design-build construction services, the amount of the performance bond shall be the price of construction and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services, and other related services included in the contract.

This bond is solely for the protection of the university. The conditions of the performance bond regarding the surety's obligation shall follow the form prescribed by the university.

- b. A payment bond satisfactory to the university, executed by a surety company authorized to do business in this state, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction provided for in the contract, in an amount equal to one hundred percent (100%) of the price specified in the contract:

- (1) except that, for Job-order-contracting construction services, the payment bond:
- (a) shall cover the full amount of construction under the Job-order-contracting construction services contract,
 - (b) shall not include any design services, preconstruction services, finance services, maintenance services, operations services and other related services included in the contract,
 - (c) may be a single bond for the full term of the contract, a separate bond for each year of a

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 29

multiyear contract or a separate bond for each job order, as determined by the university, and if a single bond for the full term of the contract or a separate bond for each year of a multiyear contract, shall initially be based on the university's reasonable estimate of the amount of construction that the university believes is likely to actually be done during the full term of the contract or during the particular year of a multiyear contract.

- (2) except that, for Construction-Manager- at-Risk construction services and Design-Build construction services, the amount of the payment bond shall be the price of construction, excluding the cost of any design services, preconstruction services, finance services, maintenance services, operations services and any other related services included in the contract.

For Design-Bid-Build construction, the performance bond and the payment bond shall be delivered by the contractor to a university at the same time as the contract is executed. For Construction-manager-at-risk, Design-build and Job-order-contracting construction services, the performance bond and the payment bond shall be provided only on and at the same time as execution of a contract or an amendment to a contract that commits the contractor to provide construction for a fixed price, guaranteed maximum price or other fixed amount within a designated time-frame

- c. In procurement of construction under the Design-bid-build project delivery method, if a contractor fails to deliver the required security, the contractor's bid shall be rejected, the contractor's bid security shall be enforced and award of the contract may be made to the next lowest bidder.

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 30

2. ABOR Policy 3-804E (Professional Services, Construction and Construction Services, Contract Performance and Payment Bonds) shall not be construed to limit the authority of the university to require a performance bond or other security in addition to those bonds or in circumstances other than specified in ABOR Policy 3-804E. 1 (Professional Services, Construction and Construction Services, Contract Performance and Payment Bonds).

43. Any person who furnished labor or material to the contractor or its subcontractors for the work provided in the contract in respect of which a payment bond is furnished under ABOR Policy 3-804E (Professional Services, Construction and Construction Services, Contract Performance and Payment Bonds) and who is not paid in full within ninety (90) days from the date on which the last of the labor was performed or material was supplied by the person for whom the claim is made, has the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due the person. However, any person who had a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, has a right of action on the payment bond on giving the contractor only, a written preliminary twenty-day (20) notice as provided for in A.R.S. §33-992.01, subsection C, paragraphs 1, 2, 3 and 4 and subsections D, E and I, and upon giving written notice to the contractor within ninety (90) days from the date on which the last of the labor was performed or material was supplied by the person for whom the claim is made.

The person shall state in the notice the amount claimed and the name of the party for whom the labor was performed or to whom the material was supplied. The notice shall be personally served or sent by registered mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

54. Any suit instituted on a payment bond shall be brought in the superior court in the county in which the construction contract was

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 31

to be performed, but no suit may be commenced later than one year after the date on which the last of the labor was performed or material was supplied by the person bringing the suit. The obligee named in the bond need not be joined as a party in the suit.

F. Bond Form

The board shall specify the form of the bonds required by this article.

G. Contract Payment Retention

1. Ten percent (10%) of all construction contract payments shall be retained by a university as insurance of proper performance of a contract or, at the option of the contractor, a substitute security may be provided by the contractor in an authorized form pursuant to a policy adopted by the university. When the contract is fifty percent (50%) completed, one-half (1/2) of the amount retained shall be paid to the contractor by the university provided that the university has determined that the contractor is making satisfactory progress on the contract and there is no specific cause or claim requiring a greater amount to be retained. After the contract is fifty percent (50%) completed, no more than five percent (5%) of the amount of any subsequent progress payments made under the contract shall be retained by the university provided that the university has determined that the contractor is making satisfactory progress on the project, but if at any time the university determines satisfactory progress is not being made, then ten percent (10%) retention shall be reinstated for all progress payments made under the contract subsequent to that determination. The contractor is entitled to all interest from any substitute security. Any retention shall be paid or substitute security shall be returned to the contractor within sixty (60) days after final completion and acceptance of work under the contract. Retention of payments by a university longer than sixty (60) days after final completion and acceptance requires a specific written finding by the university of the reasons justifying the delay in payment. A university may not retain any monies after sixty (60) days which are in excess of the amount necessary to pay the expenses the university reasonably expects to incur in order to pay

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 32

or discharge the expenses determined by the finding justifying the retention of monies. A university shall not accept any substitute security unless accompanied by a signed and acknowledged waiver of any right or power of the obligor to set off any claim against either the university or the contractor in relationship to the security assigned. In any instance in which the university accepts substitute security as provided in ABOR Policy 3-804G (Professional Services, Construction and Construction Services, Contract Payment Retention), any subcontractor undertaking to perform any part of the contract is entitled to provide such security to the contractor.

2. Notwithstanding anything to the contrary in ABOR Policy 3-804G (Professional Services Construction and Construction Services, Contract Payment Retention) or in any other abor policy or in any other law:
 - a. There shall be no retention for Job-order-contracting construction services contracts and the university may elect to have no retention for construction-manager-at-risk and design-build construction services
 - b. ABOR Policy 3-804G (Professional Services, Construction and Construction Services, Contract Payment Retention) applies only to amounts payable in a construction SERVICES contract for construction and does not apply to amounts payable in a construction services contract for design services, preconstruction services, finance services, maintenance services, operations services and any other related services included in the contract.

H. Progress Payment

1. Progress payments may be made by a university to the contractor on a monthly basis and within thirty (30) days after receipt of a certified and approved estimate of the work performed during a preceding period of time, except that a percentage of all estimates shall be retained as and to the extent provided in ABOR Policy 3-804G (Professional Services Construction and Construction

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 33

Services, Contract Payment Retention) above. The progress payments shall be paid on or before fourteen (14) days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the university on submission to any person designated by the university for the submission, review and approval of the estimate of the work. An estimate of the work submitted under this paragraph shall be deemed approved and certified after seven (7) days from the date of submission unless before that time the university or university's agent prepares and issues a specific written finding detailing those items in the estimate of the work that are not approved and certified under the contract. The owner may withhold an amount from the progress payment sufficient to pay the expenses the owner reasonably expects to incur in correcting the deficiency set forth in the written finding. On completion and acceptance of separate divisions of the contract on which the price is stated separately in the contract, payment may be made in full including retained percentages, less deductions, unless a substitute security has been provided pursuant to ABOR Policy 3-804G (Professional Services, Construction and Construction Services, Contract Payment Retention) above. No contract for construction may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section.

2. The contractor shall pay to the contractor's subcontractors and material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the contractor or subcontractor on account of the work performed by the contractor's or subcontractor's subcontractors, to the extent of each such subcontractor's interest therein, except that no contract for construction may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section. These payments to subcontractors or material suppliers shall be based on payments received pursuant to this section. The subcontractor or material supplier shall notify the registrar of contractors and the university in

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 34

writing of any payment less than the amount or percentage approved for the class or item of work as set forth in ABOR Policy 3-804 (Professional Services, Construction and Construction Services).

3. A subcontractor may notify the university in writing requesting that the subcontractor be notified by the university in writing within five (5) days from the payment of each progress payment made to the contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.
4. Nothing in the university procurement code prevents the contractor or subcontractor, at the time of application and certification to the university or contractor, from withholding such application and certification to the university or contractor for payment to the subcontractor or materials supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum, or a reasonable amount for retention that does not exceed the actual percentage retained by the owner.
5. If any payment to a contractor is delayed after the date due interest shall be paid at the rate of one percent (1%) per month or a fraction of the month on such unpaid balance as may be due.
6. If any periodic or final payment to a subcontractor is delayed by more than seven (7) days after receipt of periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay the contractor's or subcontractor's subcontractor or material supplier interest, beginning on the eighth (8TH) day, at the rate of one percent (1%) per calendar month or a fraction of a calendar month on such unpaid balance as may be due.

Policy Number: 3-804	Policy Name: Professional Services and Construction Services Procurement
Policy Revision Dates: 6/2006, 9/00, 4/96, 2/88, 7/85, 12/84	Page 35

7. Notwithstanding anything to the contrary in ABOR Policy 3-804H (Professional Services, Construction and Construction Services, Progress Payment) ABOR 3-804H applies only to amounts payable in a construction services contract for construction and does not apply to amounts payable in a construction services contract for design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

Policy Number: 3-805	Policy Name: Specifications
Policy Revision Dates: 6/2006, 4/96, 7/85, 12/84	Page 1

3-805 Specifications

A. Duties of Procurement Officer

1. The procurement officer shall establish guidelines consistent with this Code and other Board policies governing the preparation, maintenance and content of specifications for materials, services, construction and construction services required by a university.
2. The procurement officer shall establish specifications based on considerations of energy conservation for the procurement of selected energy consumptive material.
3. Notwithstanding anything else in the ABOR procurement code, all procurement solicitations for volatile organic compound containing commodities shall include a request for substitute commodities with lower or no volatile organic content. Substitute products shall not have increased toxicity compared to the original commodity.

B. Maximum Practicable Competition

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

1. Where brand name only is specified, the reasons for this shall be documented in the bid file and approved by the procurement officer or his designee.
2. Brand name or equivalent specifications for goods anticipated to cost more than \$50,000 shall identify key features of the item unless the reasons for not doing so are documented and approved by the procurement officer or his designee.

Policy Number: 3-806	Policy Name: Contract Clauses
Policy Revision Dates: 4/96, 2/88, 785, 12/84	Page 1

3-806 Contract Clauses

A. General Requirements

1. The procurement officer shall include in all contracts, the following:
 - a. Necessary clauses which will provide for appropriate remedies, adjustments in prices, time of performance or other contract provisions.
 - b. Clauses mandated by Board policy, including this Code.
 - c. Clauses necessary to meet the requirements of guidelines issued by Counsel to the Board and approved by the Board.
2. Variations from the requirement in Paragraph 1 above may occur when supported by a written determination that indicates the circumstances justifying the variation and provided that notice of any material variation is stated in the solicitation.
3. All contract clauses shall be consistent with the provisions of Board policies, including this Code, and state and federal law.

B. Standard Contracts for Construction Projects

1. Standard contracts approved by counsel shall be used for the procurement of professional design services, construction services or construction management services with respect to all construction projects.
2. Variations from the terms of standard contracts may occur when necessary to accommodate the requirements of a specific project provided the variations do not materially or adversely affect university or Board rights or interests and are approved by local university counsel.
3. Variations which in the opinion of Counsel to the Board substantially and/or materially change the terms and requirements of the standard contracts require prior approval by Counsel to the Board.
4. Standard contracts are subject to revision by Counsel.

Policy Number: 3-806	Policy Name: Contract Clauses
Policy Revision Dates: 4/96, 2/88, 785, 12/84	Page 2

5. Standard contracts are subject to joint annual review by the universities and Counsel. Counsel shall report on the need for any substantial or material revisions to standard contracts.

C. Professional Liability Insurance

1. Contracts for the procurement of the services of a design consultant shall include, in addition to any other insurance requirements, professional responsibility insurance providing for errors and omissions coverage for the benefit of the university in an amount which is reasonable for any project whose total cost is estimated at two million dollars or less, and in the minimum amount of one million dollars (\$1,000,000) for any project whose total cost is estimated to be greater than two million dollars.
2. Contracts for the procurement of consultant services not in connection with a specific construction project or concerning nonconstruction activities may be exempt from professional liability insurance requirements at the discretion of the university.

D. Cost Principles

The procurement officer at each university shall promulgate procedures that set forth 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.

E. Negotiation in Construction Contracts

A construction contract shall include a provision which provides for negotiations between the university and the contractor for the recovery of damages related to expenses incurred by the contractor for a delay for which the university is solely responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the contract. This section shall not be construed to void any provision in the contract which requires notice of delays, provides for arbitration or other procedure for settlement or provides for liquidated damages.

Policy Number: 3-807	Policy Name: Materials Management
Policy Revision Dates: 7/85, 12/84	Page 1

3-807 Materials Management

A. Appropriate Procedures

1. The procurement officer shall promulgate procedures governing:
 - a. The acquisition and distribution of federal surplus materials.
 - b. The sale, lease or disposal of surplus materials by public auction, competitive sealed bidding or other appropriate method designated by regulation.
 - c. The purchase of any such materials by an employee of the owning or disposing agency.
 - d. The transfer of excess and surplus materials.
 - e. The trade-in of excess or surplus materials.
2. Each university may acquire and distribute from the United States government surplus materials as may be usable and necessary for public purposes.

Policy Number: 3-808	Policy Name: Intergovernmental Procurement
Policy Revision Dates: 4/96, 7/85, 12/84	Page 1

3-808 Intergovernmental Procurement

A. Definitions

In this Section, unless the context otherwise requires:

1. "Cooperative purchasing" means procurement conducted by, or on behalf of, one or more public procurement units or one or more nonprofit educational or public health institutions and the Board for itself, a consortia purchasing group, one or more universities, or both. This term does not mean any internal cooperative agreement or consortium agreement existing only between and among the Board and/or one or more universities under its jurisdiction.
2. "Eligible procurement unit" means a public procurement unit or a nonprofit educational or public health institution participating in a cooperative purchasing agreement.
3. "Local public procurement unit" means any political subdivision and any agency, board, department or other instrumentality of such political subdivision, but not the Board or a university.
4. "Nonprofit educational or public health institution" means any educational or public health institution, no part of the income of which is distributable to its members, directors or officers, but does not mean the Board or any institution under its jurisdiction.
5. "Public procurement unit" means either a local public procurement unit, the Arizona Department of Administration, any other state, or any agency of the United States.

B. Cooperative Purchasing Authorized

1. Any university may either 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 and among the eligible procurement units. An agreement entered into as provided in this Section 3-808 is exempt from A.R.S. §11-952, Subsections D, E, and F. Parties under a cooperative purchasing agreement may:

Policy Number: 3-808	Policy Name: Intergovernmental Procurement
Policy Revision Dates: 4/96, 7/85, 12/84	Page 2

- a. Sponsor, conduct or administer a cooperative agreement for the procurement, use or disposal of any materials, services, or construction.
 - b. Cooperatively use currently owned and/or newly acquired materials or services.
 - c. Commonly use or share currently owned and/or newly acquired warehousing facilities, capital equipment and other facilities.
 - d. Provide personnel, except that the requesting eligible procurement unit or university shall pay the eligible procurement unit or university providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.
 - e. On request, make available to other eligible procurement units or universities information, technical or other services that may assist in improving the efficiency or economy of procurement. The eligible procurement unit or university furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.
2. The activities described in Subparagraphs a through e of Paragraph 1 above do not limit what parties may do under a cooperative purchasing agreement.
- C. Cooperative Purchasing Agreement in Form of a Requirements Contract
- Any requirements contract with an eligible procurement unit entered into pursuant to Subsection B above shall provide that:
1. Payment for materials or services and inspection and acceptance of materials or services ordered by the eligible procurement unit or university under the requirements contract shall be the exclusive obligation of such unit or university.

Policy Number: 3-808	Policy Name: Intergovernmental Procurement
Policy Revision Dates: 4/96, 7/85, 12/84	Page 3

2. The exercise of any rights or remedies by the eligible procurement unit or university shall be the exclusive obligation of such unit or university.
3. The Board or university may terminate without notice any cooperative purchasing agreement if the eligible procurement unit fails to comply with the terms of the contract.
4. Failure of an eligible procurement unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require the Board or a university to exercise its own rights or remedies.
5. The eligible procurement unit shall not use a cooperative agreement with the Board as a method for obtaining additional concessions or reduced prices for similar material or services.

D. Use of Payments Received by a Supplying Public Procurement Unit or University

All payments received by a public procurement unit or university supplying personnel or services shall be available to the supplying public procurement unit or university to defray the cost of the cooperative program.

E. Public Procurement Units or Universities in Compliance with Code Requirements

If the public procurement unit or university administering a cooperative purchase complies with the requirements of this Code, any public procurement unit or university participating in such a purchase is deemed to have complied with this Code. A university may not participate in a cooperative purchasing agreement for the purpose of circumventing this Code.

F. Contract Controversies

1. Under a cooperative purchasing agreement in which the Board is a party, controversies arising between an administering public procurement unit or university and its bidders, offerors or

Policy Number: 3-808	Policy Name: Intergovernmental Procurement
Policy Revision Dates: 4/96, 7/85, 12/84	Page 4

contractors shall be resolved in accordance with Section 3-809 of this Code.

2. Procedures other than those set forth in Section 3-809 of this Code may be used where agreed to by the parties to the cooperative agreement and approved by Counsel to the Board.
- G. A university may purchase approved materials and service directly from Arizona Industries for the Blind and Arizona Correctional Enterprises without competitive bidding.
- H. If a procurement involves the expenditure of federal assistance or contract monies, the university involved in the procurement shall comply with federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Code.

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 1

3-809 Legal Remedies

A. Definitions

In this Section, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidary relationship between persons.
2. "Award" means the earliest of (a) issuance of a notice to proceed, (b) execution of a contract, or (c) authorization to contract provided by the Board or its designee for such purpose.
3. "Debarment" means an action taken by the president, or designee under Subsection D below to prohibit a person or entity from participating in procurements with the Board or any university or both. The period of debarment shall be for not less than one year nor more than five years.
4. "Designee" means a duly authorized representative of a university president or, where appropriate, of the Executive Director of the Board.
5. "Filed" means delivery to the procurement officer, to the university president, or to the Executive Director of the Board, whichever is applicable. A time/date stamp affixed to a document by the office of the procurement officer, the university president or the Executive Director of the Board, whichever is applicable, shall be determinative of the time of delivery for purposes of filing.
6. "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 bylaws.
7. "Interested party" means an actual or prospective bidder or offeror whose direct economic interest may be affected by the issuance of

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 2

a solicitation, the award of a contract, or by the failure to award a contract. Whether an actual prospective bidder or offeror has a direct economic interest will depend upon the circumstances in each case. At a minimum, the interest must be substantial and must be tangibly affected by the administrative action or proposed action concerned in the case. For instance, a bidder who is fourth in line for award does not have a sufficient economic interest to protest the proposed award of a contract to the low bidder.

8. "President" or "university president" means the president of a university or, where appropriate, the Executive Director of the Board.
9. "Receipt" or "Received" means delivery to the last known address of the addressee to whom the document is sent. A document, if undeliverable, is deemed to have been received by the addressee if properly sent to the addressee's last known address. A document that is placed in the mail and that is properly addressed and not returned is presumed to have been received within five days of mailing unless the addressee can show otherwise.
10. "Suspension" means an action taken by a president temporarily disqualifying a person from participating in procurements with the Board and/or any university. The period of suspension shall not exceed one year.

B. Bid Protests

1. Delegation of Authority
 - a. Initial review and resolution of bid protests shall be conducted by the procurement officer or designee for the university.
 - b. Final decision on appeal of bid protests shall be made by the university president or a designee other than the procurement officer.
2. Filing of Protests

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 3

- a. Any interested party may protest a solicitation issued by a university, or the proposed award or the award of a contract with a university by filing a notice of protest.
- b. Time for Filing Protest
 - (1) Protests concerning improprieties in a solicitation
 - (a) In procurements inviting bids, protests based upon alleged errors, irregularities or improprieties in a solicitation that are apparent before the bid opening shall be filed before the bid opening.
 - (b) In procurements requesting proposals, protests based upon alleged errors, irregularities or improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals. Protests concerning improprieties that do not exist in the initial solicitation, but that are subsequently incorporated into the solicitation, shall be filed by the next closing date for receipt of proposals following the incorporation.
 - (2) In cases other than those covered in Subdivision (1) above, protests shall be filed no later than ten days after a contract is awarded in connection with the procurement action.
 - (3) Failure to timely protest shall be deemed a waiver of all rights under this Code.

c. Content of Notice of Protest

The notice of protest shall be in writing and shall include the following information:

- (1) The name, address and telephone number of the protestor;

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 4

- (2) The signature of the protestor or its representative;
 - (3) Identification of the university and the solicitation or contract number;
 - (4) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - (5) The form of relief requested.
- d. Upon receipt of the protest, the procurement officer shall within five working days 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.
- e. Stay of Procurements During the Protest
- If a protest is filed before the award of a contract, no award shall be made until the protest has been resolved, unless the president or a designee other than the procurement officer makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the university or the Board.
- f. Protected Information
- (1) Materials submitted by a protestor shall not be withheld from any interested party except to the extent that the withholding of information is required by law or is permitted by law and specifically requested by the protestor.
 - (2) If the protestor believes the protest contains material that should be withheld, a statement advising the procurement officer of this fact shall accompany the notice of protest and the information shall be so identified wherever it appears. The president or a designee shall review the statement and information and shall determine whether the information shall be

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 5

withheld. Information shall be withheld if its nonrelease is necessary to protect the interests of the university, the Board or the State. The president's determination shall be in writing and state the reasons for the determination.

3. Decision by the Procurement Officer

- a. The university procurement officer shall issue a written decision within twenty days of receipt of the notice of protest.
- b. The decision shall contain an explanation of the basis of the decision. The procurement officer shall furnish a copy of the decision to the protestor by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- c. The time limit for a decision may be extended by the procurement officer for a reasonable time not to exceed thirty days. The procurement officer shall notify the protestor 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 above, the protestor may proceed as if the procurement officer had issued an adverse decision.
- e. Remedies
 - (1) If the university procurement officer sustains the protest in whole or in part and determines that a solicitation, proposed contract award, or contract award does not comply with this Code or procedures promulgated thereunder, the procurement officer shall implement an appropriate remedy.
 - (2) In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or the proposed procurement, including, but not limited to,

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 6

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, cost to the government, the urgency of the procurement, and the impact of relief on the university's mission.

- (3) An appropriate remedy may include one or more of the following:
- (a) Decline to exercise an option to renew under the contract;
 - (b) Terminate the contract;
 - (c) Reissue the solicitation;
 - (d) Issue a new solicitation;
 - (e) Award a contract consistent with this Code and the procedures promulgated thereunder;
 - (f) Reject all bids or proposals without further action; or
 - (g) Such other relief as is determined necessary to ensure compliance with this Code or procedures promulgated thereunder.

4. Appeal to the President

- a. When an appeal is sought to be taken, a notice of appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the university president within five days from the date the decision is received.
- b. Final decision on an appeal to the president shall be made by the president or a designee other than the procurement officer. Any hearing on appeal shall be conducted by the official with authority to make a final decision, or by a hearing

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 7

officer appointed by the official with authority to make a final decision.

- c. The notice of appeal shall contain:
 - (1) The information set forth in Paragraph 2.c of Subsection B, including the identification of protected information in the manner set forth in Paragraph 2.f of Subsection B.
 - (2) A copy of the decision of the procurement officer; and
 - (3) The basis for the appeal.

- d. The official or hearing officer conducting the appeal shall immediately give written notice of the pending appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Any party so notified shall, upon request, be furnished with a copy of the notice of appeal filed in the matter.

- e. Stay of Procurement during Appeal

If an appeal is filed before an award of contract and the award of the contract was stayed by the procurement officer pursuant to Paragraph 2.e of Subsection B, the filing of an appeal shall automatically continue the stay unless the official or hearing officer conducting the appeal makes a written determination that the award of the contract without delay is necessary to protect the substantial interest of the university, the Board, or the State.

- f. Dismissal before Hearing

The official or hearing officer conducting the appeal shall dismiss, upon a written determination, an appeal if:

 - (1) The appeal does not state a valid basis for protest; or
 - (2) The appeal is untimely.

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 8

g. Hearings on appeals of bid protest decisions shall be conducted pursuant to the provisions of Subsection F of this Section 3-809, except that a protestor may waive his right to an evidentiary hearing in favor of a review by the hearing officer based solely on the documentation available to the procurement officer.

h. Remedies

If the appeal is sustained in whole or in part, and a determination is made that a solicitation, proposed award, or award does not comply with this Code or procedures promulgated thereunder, an appropriate remedy shall be implemented pursuant to the provisions of Paragraph 3.e of Subsection B.

C. Contract Claims and Controversies

1. Delegation of Authority

- a. Initial review and efforts to resolve or settle a contract claim or controversy shall be conducted by the university procurement officer, except that any settlement of a claim or controversy in excess of \$25,000 shall require the prior written approval of the president or a designee other than the procurement officer.
- b. Final decision on an appeal to the president shall be made by the president or a designee other than the procurement officer. Any hearing on appeal shall be conducted by the official with authority to make a final decision, or by a hearing officer appointed by the official with authority to make a final decision.

2. Initiation of Claim or Controversy

- a. A contract controversy may be brought to the attention of the contractor by the procurement officer or may be brought to the attention of the procurement officer by the contractor.

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 9

- b. A contract claim made by a contractor shall be filed in writing with the procurement officer within the time period set forth in the procurement contract, but in no event later than one year after the date on which the last of the labor was performed or material was supplied by the contractor.
3. The parties to any contract claim or controversy may agree to have the work or performance under the contract proceed under a reservation of rights so as not to waive the right of any party in the matter.
4. Procurement Officer's Decision
 - a. Where a contract controversy is submitted by the procurement officer to the contractor and is not resolved by mutual agreement, the procurement officer shall promptly refer the matter to the president for a hearing pursuant to Paragraph 6 below.
 - b. If a controversy or claim submitted or filed by a contractor cannot be resolved by mutual agreement, the procurement officer shall issue a final decision. Upon a written request by the contractor for a final decision, the procurement officer shall promptly issue that decision no more than 120 days after receipt of the request. Before issuing a final decision, the procurement officer shall review the facts pertinent to the controversy or claim and secure any necessary assistance from legal, fiscal, and other advisors.
 - (1) Where the claim or controversy exceeds \$50,000, the time limit for a final decision may be extended for a reasonable time not to exceed thirty days. 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 shall be issued.
 - (2) The time limit for a decision involving a claim or controversy amounting to \$50,000 or less may not be extended.

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 10

(3) If the procurement officer fails to issue a decision within 120 days after receipt of a request to do so or within any permitted extension of that time period, the contractor may proceed as if the procurement officer had issued an adverse decision.

c. The procurement officer shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:

- (1) A description of the controversy;
- (2) A reference to the pertinent contract provisions;
- (3) A statement of the factual areas of agreement or disagreement;
- (4) A statement of the procurement officer's decision, with supporting rationale;
- (5) A paragraph substantially as follows:

This is the final decision of the procurement officer. This decision may be appealed to the president of the university. If you decide to make such an appeal, you must mail or otherwise furnish written notice of appeal to the president within five days from the date you receive this decision.

5. Appeal to the President

- a. A written notice of appeal from a final decision of a procurement officer on a claim or controversy must be filed with the university president within five days of the receipt of the decision.
- b. Final decision on an appeal to the president shall be made by the president or a designee other than the procurement officer. Any hearing on appeal shall be conducted by the official with authority to make a final decision, or by a hearing

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 11

officer appointed by the official with authority to make a final decision.

6. Hearings on appeals of decisions related to contract claims or controversies shall be conducted in accordance with the provisions of Subsection F of this Section 3-809.

D. Debarment or Suspension

1. Delegation of Authority

- a. A university officer designated by the president has authority pursuant to Paragraph 2 of this Subsection D to propose action to suspend or debar a person from procurement activity with any university and the Board.
- b. A final decision to debar or suspend a person or an affected affiliate from participating in procurements shall be made by the president or designee.

2. Initiation of Debarment or Suspension Action

Upon receipt of information concerning a possible cause for debarment, the designated university officer shall investigate or have investigated the possible cause. If the officer has a reasonable basis to believe that a cause for debarment exists, that officer may propose debarment or suspension proceedings by filing a proposal for debarment or suspension with the office designated by the president.

3. Notice

- a. Except as provided in Subparagraph c. below, if suspension or debarment is proposed, the designated university officer shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, of the proposed suspension or debarment and that the person may request a hearing which shall be scheduled in accordance with this Section 3-809.

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 12

- b. Except as provided in Subparagraph c. below, if suspension or debarment of an affiliate is also proposed in the notice under subparagraph a. above, the affiliate shall have a right to appear in any hearing on the proposed suspension or debarment to show mitigating circumstances. The affiliate shall in writing advise the designated university officer within thirty days of receipt of the notice of its intention to appear under Subparagraph b. Failure to provide written notice of appearance within this period shall be a waiver of the right to appear.
- c. The designated university officer, upon notice, may suspend or debar a person or an affiliate under suspension or debarment by the State or any federal procurement agency who has had a prior opportunity for hearing in connection with the suspension or debarment by the State or any federal procurement agency. The period of such suspension or debarment from procurement with the Board and any university or both shall run concurrently with the suspension or debarment by the State or federal procurement agency.

4. Grounds for Suspension or Debarment

- a. A person may be suspended or debarred where reasonable grounds are found to exist.
- b. Grounds for suspension or debarment include the following:
 - (1) Conviction of any person or any subsidiary or 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.
 - (2) Conviction of any person or any subsidiary or 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, receiving stolen property or

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 13

any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor.

- (3) Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.
- (4) Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, such as either of the following:
 - (a) Knowingly fails without good cause to perform in accordance with the specifications or within the time limit provided in the contract.
 - (b) 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.
- (5) Any other cause deemed to affect responsibility as a state contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity.

5. Imputed Knowledge

- a. Improper conduct, as set forth in Paragraph 4 above, may be imputed to an affiliate for purposes of suspension or debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
- b. Improper conduct, as set forth in Paragraph 4 above, 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

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 14

person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

6. Reinstatement

- a. A request for reinstatement shall not be considered until at least one year has run on the debarment. At that time, the designated university officer may reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.
- b. Any debarred person may request reinstatement by submitting a petition to the designated university officer supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- c. The designated university officer may require a hearing on the request for reinstatement.
- d. The decision on reinstatement shall be in writing and specify the factors on which it is based.
- e. Decisions on reinstatement requests are not subject to appeal.

7. Limited Participation

The Board may allow a debarred person to participate in contracts with the Board on a limited basis during the debarment period upon a written determination that participation is advantageous to the Board, the university or the State. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

8. Hearing Procedure

Hearings required or permitted under this Subsection D shall be conducted pursuant to the provisions of Subsection F below.

E. Hearing Officer or Official Conducting Hearing

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 15

1. Any hearing required or permitted under this Section 3-809 may be conducted by a hearing officer appointed for that purpose or by the official with authority to make a final decision in the matter.
2. A decision by a hearing officer or by the official with authority to make a final decision shall be based on the evidence presented at hearing and shall include proposed findings of fact and conclusions of law. However, a decision by a hearing officer shall only constitute a recommendation to be submitted to the official with authority to make a final decision.
3. A hearing officer or other official conducting any hearing under this Code shall have such powers and duties as are set forth in this subsection and in Subsection F below.

F. General Hearing Procedures

1. All hearings required or permitted under these rules shall be conducted as contested cases pursuant to these rules and the provisions of Article 1, Chapter 6, Title 41, Arizona Revised Statutes.
2. Proper and adequate written notice of the time, date and place of hearings shall be made by the hearing officer.
3. All hearings shall be recorded manually or by a recording device. A transcribed record of the hearing shall be made available at cost to the requesting party.
4. The hearings shall be conducted in an informal manner without formal rules of evidence or procedure.
5. The hearing officer may:
 - a. Hold pre-hearing conferences to settle, simplify, or identify the issues in the proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 - b. Require parties to state their positions concerning the various issues in the proceedings;

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 16

- c. Require parties to produce for examination those relevant witnesses and documents under their control;
 - d. Rule on motions, and other procedural items pending before such officer;
 - e. Regulate the course of the hearing and conduct of participants;
 - f. Establish time limits for submission of motions or memoranda;
 - g. 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 any person from further participation in the hearing.
 - h. 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
 - i. Administer oaths or affirmations.
6. Unless the hearing officer has been authorized to make a final decision, in accordance with Section 3-809(C), the recommendation of the hearing officer shall be transmitted to the official with authority to make a final decision. The official may affirm, modify or reject the recommendation and order further appropriate proceedings. The recommendation when affirmed or modified, signed by the official with authority to make a final

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 17

decision and filed shall constitute the decision on the matter, which shall be final.

7. The decision shall be sent to all parties by certified mail, return receipt requested. The decision shall state that a party adversely affected may within ten days of mailing request a rehearing.

G. Rehearing or Review of Final Decision

1. Any party who is aggrieved by a final decision of the official with authority to make a final decision may file with the official, not later than ten days after mailing of the decision, a written motion for rehearing or review of the decision specifying the particular grounds. Any supporting affidavit shall accompany the motion.
2. Interested parties shall be notified of the request. A response may be filed by an interested party within five days after receipt of the notice. The official with authority to make a final decision may require the filing of written briefs and may provide for oral argument.
3. A rehearing of the decision may be granted for any of the following causes materially affecting the moving party's rights:
 - a. Irregularity in the proceedings or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 - b. Misconduct of the official with authority to make a final decision, the hearing officer, or any party;
 - c. Accident or surprise that could not have been prevented by ordinary prudence;
 - d. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 - e. Excessive or insufficient penalties;

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 18

- f. Error in the admission or rejection of evidence or other error of law occurring;
 - g. A showing that the decision is not justified by the evidence or is contrary to law.
4. A decision concerning a request for rehearing shall be in writing and state the basis for the decision. A decision granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
 5. The official with authority to make a final decision, within the time for filing a motion for rehearing under this Subsection G, may on his own initiative order a rehearing or review of the decision for any reason for which he might have granted a rehearing on motion of a party.

H. Master List

1. The Board shall maintain a master list of debarments, suspensions and voluntary exclusions under this Section 3-809. The master list shall show the following:
 - a. The names of those persons whom the universities or the Executive Director have debarred or suspended under this Section 3-809.
 - b. The period of debarment or suspension, including the expiration date;
 - c. The basis for the debarment or suspension; and
 - d. A separate section listing persons voluntarily excluded from participation in university contracts.

I. Miscellaneous

1. Notwithstanding any law to the contrary, including the provisions of Title 12, Chapter 7, Article 2, this Section 3-809 and the procedures provided by this Section shall be the exclusive procedures for

Policy Number: 3-809	Policy Name: Legal Remedies
Policy Revision Dates: 4/96, 7/85, 12/84	Page 19

asserting a claim against the Board or a university arising in relation to any procurement conducted under this Code.

2. Any final decision of an official with authority to make a final decision in a matter referred to in this Section 3-809 is subject to judicial review pursuant to Title 12, Chapter 7, Article 6 by any party to the proceedings before the official. Any complaint shall be served upon the Arizona Board of Regents by service upon the Executive Director of the Board within the time prescribed pursuant to A.R.S. §12-904.
3. The applicable procedures set forth in this Section 3-809, including the procedure on rehearing set forth in Subsection G, is a jurisdictional prerequisite to obtaining a final decision for which judicial review may be sought. The failure to complete any applicable procedure shall constitute a failure to exhaust administrative remedies.

Policy Number: 3-810	Policy Name: Small Business Procurement Program
Policy Revision Dates: 4/96, 3/86	Page 1

3-810 Small Business Procurement Program

A. Procurement for Small Business

1. Each fiscal year a university shall award contracts or portions of contracts for construction, reconstruction, or rehabilitation of buildings and for purchase of materials or services to small business as defined in A.R.S. §41-1001, paragraph 14, in accordance with the procedures for bidding and source selection set forth in this Code.
2. A university will make a good faith effort to ensure that the total value of contracts or portions of contracts awarded pursuant to this section is at least 15 percent of the average of the total value of all competitive contracts let by the university for each of the previous three fiscal years. For purposes of determining the extent to which the goal set forth in this provision is being or has been met each year, a university may include that portion of any contract award which represents work performed by a subcontractor of a contractor, provided that the subcontractor, but not the contractor, is a small business.

B. Payment on Contract Awards

1. A contractor which is a small business shall receive payment in full on all sums due and owing on a contract awarded pursuant to this section no later than 30 days after the due date of a payment on the contract. A subcontractor to a contract awarded pursuant to this section shall receive payment in full on all sums due and owing by the contractor which is a small business no later than 30 days after the contractor receives payment from the university.
2. If a university has received written notice that a contractor which is a small business has not paid a subcontractor within the 30 days required by this subsection B, then such contractor shall not be awarded any contract by the university for one year from the date of such nonpayment. A university shall not be required to verify the accuracy of any written notice and upon withdrawal of such written notice or upon determining that the information in such notice is inaccurate, the restrictions of this paragraph shall no longer be in effect.

Policy Number: 3-810	Policy Name: Small Business Procurement Program
Policy Revision Dates: 4/96, 3/86	Page 2

C. Annual Report

Within 60 days after the end of the fiscal year, the procurement officer at each university shall prepare and have available a report showing university efforts to comply with the requirements of subsection A, paragraph 2. The first such annual report shall be prepared at the end of the 1986-87 fiscal year.