R7-2-1003. General Provisions

**A.** The school district shall not award a contract or incur an obligation on behalf of the school district unless it is reasonable to believe sufficient funds will be available for the procurement. If sufficient funds are not available when a solicitation is issued, the solicitation shall include a statement that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

**B.** Any bid or proposal that is conditioned upon award to the bidder or offeror of both the particular contract being solicited and another school district contract shall be deemed nonresponsive or unacceptable.

**C.** Except by mutual consent of the parties to the contract, ~~no rule~~ rules in Articles 10 and 11 ~~may~~ shall not change any commitment, right or obligation of a school district or of a contractor under a contract in existence on the effective date of the rule.

**D.** Rights and duties arising from a school district contract may only be transferred, waived or assigned upon the express written consent of both parties.

**E.** School district employees and public officers shall not purchase construction, materials or services for their own personal or business use from contracts entered into by the school district.

**F.** If a contractor requests to change the name in which it holds a school district contract, the school district may, upon receipt of a document indicating the name change, enter into a contract modification with the contractor to effect the name change. The contract modification shall provide that no other terms and conditions of the contract are changed.

**G.** The school district may allow electronic media transactions, including an electronic record or electronic signature, if consistent with state law and advantageous to the school district.

**H.** A person who serves on an evaluation committee for a procurement is subject to A.R.S. § 41-2616(C).

**I.** ~~No project~~ Projects ~~or purchase~~ and purchases ~~may~~ shall not be divided or sequenced into separate projects or purchases in order to avoid the limits prescribed in Articles 10 and 11.

**J.** A person who contracts for or purchases materials, services, goods, construction or construction services shall be subject to the penalties prescribed in A.R.S. 15-213 and A.R.S. 41-2616 for violations of and attempts to avoid Articles 10 and 11.

**K.** Pursuant to A.R.S. 15-213 and A.R.S. Title 41 Chapter 23, the Attorney General shall enforce the provisions of Articles 10 and 11 and may take action prescribed therein.

R7-2-1004. Written Determinations

**A.** Written determinations required by Articles 10 and 11, including for any specified professional services, construction, construction services or materials to an entity selected from a qualified select bidders list or through a school purchasing cooperative, shall specify the reasons for the determination, including how the determination was made.

**B.** The school district is authorized to prescribe methods and operational procedures to be used in preparing written determinations.

**C.** The school district shall place the written determination into the school district’s procurement file.

R7-2-1014. Maximum Practicable Competition

**A.** Procurement of any materials, services, goods, construction or construction services pursuant to Article 10 or Article 11, shall seek to achieve maximum practicable competition.

**~~A.~~ B.** All specifications, including those prepared by architects, engineers, consultants and others for public contracts, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the school district’s needs and shall not be unduly restrictive.

**~~B.~~ C.** Unless otherwise permitted by R7-2-1010 through R7-2-1016, all specifications shall describe the school district’s requirements in a manner that does not unreasonably exclude a material, service, or construction item. Proprietary specifications shall be used only as provided in R7-2-1012.

**~~C.~~** **D.** To the extent practicable, the school district shall use accepted commercial specifications and shall procure standard commercial materials.

**~~D.~~ E.** Contracts for the preparation of specifications by persons other than the school district shall require the specification writer to adhere to R7-2-1010 through R7-2-1016.

R7-2-1093. Multiterm Contracts

**A.** Unless otherwise provided by law, multiterm contracts for materials or services and contracts for job-order-contracting construction services may be entered into if the duration of the contract and the conditions of renewal or extension, if any, are included in the invitation for bids or the request for proposals and if monies are available for the first fiscal period at the time the contract is executed. The duration of contracts for materials or services and contracts for job-order-contracting construction services shall be limited to no more than five years unless the governing board determines in writing before the procurement solicitation is issued that a contract of longer duration would be advantageous to the school district. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

**B.** Before the use of a multiterm contract, it shall be determined in writing by the governing board that:

1. Estimated requirements cover the period of the contract and are reasonable and continuing.

2. Such a contract will be advantageous to the school district by encouraging effective competition or otherwise promoting economies in school district procurement.

**C.** The school district shall include in all multiterm contracts a clause specifying that the contract shall be canceled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year.

**D.** 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 or services delivered under the contract or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations available for such purposes.

**E.** A contract for specified professional services shall have a term not ~~exceeding~~ to exceed five years after the date of contract award by the school district of the first contract under the procurement, except that the contract may continue in effect after the five year term for projects on which the rendering of specified professional services commences within the five year term.

**F.** Notwithstanding this section, contracts for auditors and auditing firms shall have a term as prescribed in A.R.S. 15-213.

R7-2-1112. Contractor Licenses, Contract and Performance Requirements

**A.** Notwithstanding any other rule:

1. 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 actually performing the design services on behalf of the contractor is appropriately registered.

2. 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.

3. The school district shall obtain and maintain a record of proof in the procurement file that a construction or construction services provider that has been awarded a contract with the school district, or through a cooperative purchasing agreement, has a license in good standing to perform construction work pursuant to A.R.S. Title 32, Chapter 10. The license shall be active on the day the contract is awarded. This paragraph does not require licensure for professions that are not licensed pursuant to A.R.S. Title 32, Chapter 10.

**B.** In a procurement for construction-manager-at-risk construction services or design-build construction services, except for design-build contracts awarded pursuant to R7-2-1111, the school district shall enter into a written contract with the contractor for preconstruction services under which the school district shall pay the contractor a fee for preconstruction services in an amount agreed by the school district and the contractor, and the school district 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 school district has entered into the written contract for preconstruction services and a preconstruction services fee.

**C.** Construction shall not commence under a construction services contract until the school district and contractor agree in writing on either a fixed price that the school district will pay or a guaranteed maximum price for the construction to be commenced. The construction to be commenced may be the entire project or may be one or more phased parts of the project.

**D.** For negotiated construction-manager-at-risk and design-build contracts, preconstruction services, general conditions, schedules, construction contingency, and construction fees shall be part of the contract. For design-build contracts awarded pursuant to a request for proposals, the fees shall be included in the vendor’s proposal and shall become part of the awarded contract.

**E.** For job-order-contracting construction services only:

1. The maximum dollar amount of an individual job order for job-order-contracting construction services shall be one million dollars or a higher or lower amount prescribed by the governing board in a policy adopted in a public meeting held pursuant to A.R.S. Title 38, Chapter 3, Article 3.1. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies the requirements of this subsection.

2. If the contractor subcontracts or intends to subcontract part or all of the work under a job order and if the job-order-contracting 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:

a. The contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under one or more job orders a copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid and a copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.

b. If not previously delivered to the subcontractor, the contractor has a duty to promptly deliver to each subcontractor invited to or that has agreed to do any of the work included in any job order 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, the number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform, and the standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

**F.** For all construction services contracts, the contractor performing the construction services is permitted to self-perform part of the construction work, if and to the extent agreed in writing by the school district and the contractor. The school district may use methods other than competitive bidding to assure itself that the price the school district pays to the contractor for self-performed work is fair and reasonable. Permitted methods to evaluate fairness and reasonableness of the price of self-performed work include evaluation of the contractor’s proposed scope of work and price for self-performed work by an estimator who is hired and paid by the school district, who is independent of the contractor and who may be an employee of the school district. Although the school district may elect to so require, nothing in Articles 10 and 11 shall be construed or interpreted to require the school district to require a contractor desiring to self-perform part of the construction work to competitively bid that part of the construction work against other contractors in a bid competition.

**G.** For all construction services contracts, the following requirements apply to the construction work to be performed by subcontractors and do not apply to construction work that the school district and the contractor agree in writing will be self-performed by the contractor:

1. The person selected to perform the construction services shall 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 school district shall include in each contract:

a. If the school district included its subcontractor selection plan in the request for qualifications, the school district’s subcontractor selection plan and the procedures to implement the school district’s subcontractor selection plan proposed by the awarded contractor in submitting its qualifications with those modifications to the procedures as the school district and the contractor agree.

b. If the school district did not include its subcontractor selection plan in the request for qualifications, the subcontractor selection plan proposed by the awarded contractor in submitting its qualifications with those modifications as the school district and the contractor agree.

3. In making the selection of subcontractors, the contractor shall use the subcontractor selection plan and any procedures included in its contract.

**H.** The school district 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.