# 3-801 General Provisions

Revision Dates

10/1/2026, 9/27/2018, 11/18/2016, 6/22/2006, 9/1/2000, 4/26/1996, 2/19/1988, 7/13/1985, 12/15/1984 (adopted)

## ARTICLE H. UNIVERSITY PROCUREMENT CODE

A. Applicability

1. This Article H ("University Procurement Code") shall consist of rules prescribing procurement policies and procedures for the Arizona Board of Regents (the "Board") and the institutions and universities under the Board's jurisdiction in accordance with the requirements of Arizona Revised Statute ("A.R.S.") § 41-2501. E and F. For purposes of this Code, unless specifically noted otherwise, all references in the University Procurement Code to "University," "Universities," or "Institutions" shall include any or all of the Board and the institutions and universities under the Board's jurisdiction.

2. This Code shall apply only to Procurements initiated by a University after the effective date of this Article.

3. Except as provided in ABOR Policy 3-801(A)(4) and (A)(5) 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 3-808(E) by a University. 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 other Public Procurement Units except as provided in ABOR Policy 3-808.

   b. To contracts for professional or expert 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 a University is or may become a party or to a contract for special investigative services for law enforcement purposes.

   c. To agreements negotiated by legal counsel representing a University in settlement of litigation or threatened litigation.

   d. To internal agreements solely between and among the Board

and/or any University.

e. To items purchased by a University for resale.

f. To the purchase of water, gas, electric, or other regulated utilities.

g. To real property transactions governed by Chapter 7 of the ABOR Policy Manual, “Buildings, Infrastructure and Land.”

5. Nothing in this Code shall prevent a University from complying with the terms and conditions of any grant, gift, bequest, or cooperative purchasing agreement.

B. Definitions. In this Code, words shall have the meanings set forth in this ABOR Policy 3-801(B), unless otherwise specified.

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. “Award” means the earliest of (a) issuance of a notice to proceed (b) execution of a Contract by both parties, or (c) authorization to contract provided by the University for such purpose.

3. “Bid” means a response to an Invitation for Bids.

4. “Bidder” means a Person who submits a Bid in response to an Invitation for Bids.

5. "Bidder Prequalification" means determining, in accordance with University Policies and Procedures, that a prospective Bidder or Offeror satisfies the criteria established for being included on a University Bidder's list.

6. "Bid Sample" means a sample to be furnished by a Bidder or Offeror to show the characteristics of the item offered in the Bid or Offer.

7. "Board" means the Arizona Board of Regents.

8. "Business" means any for-profit or not-for-profit corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, limited liability company or any other legal entity.

9. "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.

10. “Chief Procurement Officer” or “CPO” means the Procurement Officer within the Board or a University who is acting under specific, written authority from the Executive Director or a University President, or a person delegated that authority in writing by the Chief Procurement Officer.

11. "Code" means the University Procurement Code.

12. "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 real property.

    b. does not include:

        (1) the routine operation, repair or maintenance of existing facilities, structures, buildings, or real property.

        (2) the investigation, characterization, restoration, or remediation due to an environmental issue within existing facilities, structures, buildings, or real property.

13. “Construction-manager-at-risk” (“CMAR”) means a project delivery method in which:

    a. There are separate contracts for Design Services and Construction Services, except that a University may elect to enter into separate contracts with the CMAR for Preconstruction Services during the design phase; for Construction during the construction phase; and for any other Construction Services.

    b. The Contract for Construction Services may be entered into at the same time as the Contract for Design Services or at a later time.

    c. Design and construction of the project may be in sequential phases or concurrent phases.

    d. Finance Services, Maintenance Services, Operations Services, Preconstruction Services and other related Services may be included.

14. “Construction Services” means either of the following for CMAR, DB and JOC project delivery methods:

    a. Construction, excluding Professional Services and other Preconstruction Services, through the CMAR or JOC project delivery methods, as defined in further detail in the Construction

Contract.

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 CMAR, DB or JOC in ABOR Policy 3-801(B).

15. "Contract" means all types of agreements entered into by a University, regardless of what they may be called, for the Procurement of Materials, Services, Construction or Construction Services, or the disposal of Materials.

16. "Contract Modification" means any written alteration in the terms and conditions of any Contract accomplished by mutual action of the parties to the Contract, including Change Orders.

17. "Contractor" means any Person who has a Contract with the Board or with the Board for and on behalf of a University.

18. "Counsel" means Legal Counsel to the Arizona Board of Regents or a University.

19. "Data" means documented information, regardless of form or characteristic.

20. "Days" means calendar days as computed pursuant to A.R.S. § 1-243.

21. "Demonstration Project" means a project in which a Contractor supplies a Service or Material to a University for which the University does not pay but for which the University may be obligated to provide routine support such as utility cost and operating personnel.

22. "Design-bid-build" ("DBB") means a project delivery method in which:

a. There is a sequential Award of two (2) 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.

23. "Design-build" ("DB") means a project delivery method in which:

a. There is a single Contract for Design Services and Construction Services, except that instead of a single Contract for Design Services and Construction Services, the Board or University may elect separate contracts for Preconstruction Services and Design Services during the design phase, for Construction and Design Services during the construction phase and for any other Construction Services.

b. Design and construction of the project may be either:

(1) sequential, with the entire design complete before construction commences; or

(2) concurrent, with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.

c. Finance Services, Maintenance Services, Operations Services, Design Services, Preconstruction Services and other related Services may be included.

24. “Design Professional" means an individual or firm that is registered by the State Board of Technical Registration pursuant to A.R.S. Title 32, Chapter 1 to practice architecture, engineering, geology, landscape architecture or land surveying or any combination of those professions and any person employed by the registered individual or firm, and it includes special or consulting services required for the design of a project.

25. “Design Requirements”:

a. Means at a minimum the University’s written description of the project or Service to be procured, including:

(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 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.

26. “Design Services” means Services provided by a Design Professional.

27. “Designee” means a duly authorized representative of a University President or Board Executive Director or CPO if the CPO is authorized by the president or executive director to sub-designate.

28. “Discussion” means “Negotiation” as defined in this ABOR Policy 3-801B.

29. “Employee” means an individual drawing a salary or wage from a University or from the Board, and any non-compensated individual performing personal services for any University.

30. “Engineer Services” means those professional engineer services that are within the scope of engineering practice as provided in A.R.S. §32-101, *et. seq.*

31. "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.

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.

32. “Executive Director” or “University President” means the Executive Director of the Board or the president of a University.

33. “Finance Services” means financing for a Construction Services project.

34. “Grant” means the furnishing by the State, the Board, or a University, 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.

35. “Interested Party” means an actual or prospective Bidder or Offeror whose economic interest is affected substantially and directly by the issuance of a Solicitation, the Award of a Contract, or by the failure to Award a Contract. Whether an actual or perspective Bidder or Offeror has an economic interest will depend upon the circumstances in each case. For instance, a Bidder who is fourth ($4^{th}$) in line to receive a Contract does not have a sufficient economic interest to Protest the proposed Award of a Contract to the low Bidder.

36. "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, including the Code.

37. “Job-order-contracting” (“JOC”) 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 period.

    c. Finance Services, Maintenance Services, Operations Services, Preconstruction Services, Design Services and other related Services may be included.

38. “Landscape Architect Services” means those professional landscape architect services that are within the scope of landscape architectural practice as defined in A.R.S. § 32-101.

39. “Maintenance Services” means routine maintenance, repair and replacement of existing facilities, structures, buildings, or real property.

40. "Materials"

    a. means all property, including equipment, supplies, printing, insurance, and leases of personal property.

    b. does not include land or any interest in land or real property, as all purchases, sales or leases of land are governed by Chapter 7 of this Policy Manual.

41. "Multi-step Sealed Bidding" means a two-phase process consisting of a first phase 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.

42. “Negotiation” means an exchange or series of exchanges between a University and an Offeror or Contractor that allows the University or the Offeror or Contractor to revise an Offer or Contract, unless revision is specifically prohibited by this Code.

43. “Notice of Intent to Award” means a notice to all Interested Parties, emailed, mailed, or posted online, that a Bidder or Offeror has been selected for a Contract Award.

44. "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.

45. "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.

46. "Opening" means the date and time set for unsealing Bids, receipt of unpriced Technical Offers in Multi-step Sealed Bidding, or receipt of Proposals and Competitive Sealed Proposals.

47. “Operations Services” means routine operation of existing facilities, structures, buildings, or real property.

48. “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 10 percent by weight or volume of non-cellulosic material such as laminates, binders, coatings or saturates.

49. “Paper Product” means paper items or commodities, including paper napkins, towels, corrugated paper, and related types of cellulosic products containing not more than 10 percent by weight or volume of non-cellulosic materials such as laminates, binders, coatings or saturates.

50. "Person" means any corporation, Business, individual, union, committee, club, other organization, or group of individuals.

51. “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.

52. “Preconstruction Services” means Services and other activities performed during the design phase of a Construction project.

53. "Procurement":

    a. means buying, purchasing, renting, leasing or otherwise acquiring any Materials, Services, Construction, Construction Services or Professional Services.

    b. includes all functions that pertain to acquiring 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.

54. “Procurement Officer” means any individual who has been designated by the Executive Director, the University President, or CPO, if the CPO is authorized by the Executive Director or the President to make such designations, to conduct Procurement activities on behalf of the University or Board. The authority of any individual Procurement Officer to conduct Procurement Activities may differ depending upon the type and dollar value of the Procurement.

55. “Professional Services” means both Design Services and Services performed by an assayer or interior designer and any combination of those Services.

56. “Proposal” means an Offer submitted in response to a Request for Proposals.

57. “Proposer” means a Person who responds to a Request for Information or Request for Proposals.

58. "Purchase Description" means the words used in a Solicitation to describe the Materials, Services, Construction or Construction Services to be obtained and includes plans and specifications attached to, or made a part of, the Solicitation.

59. “Recycled Paper” means Paper Products which have been manufactured from materials otherwise destined for the waste stream and which contain at least 40 percent recovered wastepaper with 10 percent of that being Post-Consumer Material.

60. “Request for Information” means all documents issued for the sole purpose of seeking information about the availability in the commercial marketplace of Materials or Services.

61. “Request for Proposals" means all documents, whether attached or incorporated by reference, which are used in soliciting Proposals in

accordance with the procedures prescribed in the Code and other applicable ABOR policies.

62. “Request for Qualifications” means all documents, whether attached or incorporated by reference, which are used in soliciting statements of qualifications in accordance with the procedures prescribed in the Code and other applicable ABOR policies.

63. “Requirements Contract" means a term contract covering estimated quantities of Materials or Services or indefinite quantities of JOC Construction Services, or maximum and/or minimum quantities and with delivery on demand.

64. "Responsible Bidder, Proposer or Offeror" means a Person who has the capability, including necessary experience, to perform the Contract 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 and registration requirements of the State of Arizona.

65. "Responsive Bidder, Proposer or Offeror" means a Person who submits a Bid or Offer which conforms in all material respects to the Invitation for Bids or Request for Proposals.

66. “Selection Committee” means a committee of persons appointed by the CPO or a Procurement Officer for any Procurement, and any successors appointed by the CPO or Procurement Officer in the event an appointed member is unable to continue serving.

67. "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.

68. “Small Business” means a for-profit or not-for-profit organization, including its affiliates, which either (a) employs one hundred (100) full-time employees or fewer, or (b) had gross annual receipts of four million dollars ($4,000,000) or less in its last fiscal year.

69. "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, Offers, or qualifications to

perform a Contract to be entered into by the Board.

70. “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.

71. "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 and Universities under its jurisdiction.

72. “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 the Board or a University.

73. "Technical Offer or Proposal" means solicited or unsolicited submission of written information from a prospective Contractor that states how that Person 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.

74. "University" means the Arizona Board of Regents or any institution governed by and under the jurisdiction of the Board.

75. “University Policies and Procedures” means written policies, procedures, rules, guidelines, and other directives promulgated by a CPO.

76. “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.

C. Written Determinations

1. Written determinations required by this Code shall be filed and retained in the appropriate official records maintained by each University relative to the Procurement to which the determination refers.

2. Each written determination shall include the basis for the action taken in the written determination.

D. Confidential Information

1. If a Person wants to assert that a Person’s Bid, Offer, specification, or Protest contains a trade secret or other proprietary information, the Person shall include with the submission a statement supporting this assertion.

The Person shall clearly designate any trade secret and other proprietary information, using the term “confidential”. Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Code.

2. Until a final determination of confidentiality is made under ABOR Policy 3-801(D)(3), the Procurement Officer shall not disclose information designated as confidential under 3-801(D)(3)(a) except to those individuals deemed by the Procurement Officer to have a legitimate state interest.

3. Upon receipt of a submission with a statement pursuant to ABOR Policy 3-801(D)(1), the Procurement Officer shall make one of the following written determinations:

   a. The designated information is confidential and the Procurement Officer will not disclose the information except to those individuals deemed by the Procurement Officer to have a legitimate state interest;

   b. The designated information is not confidential; or

   c. Additional information is required before a final confidentiality determination can be made.

4. If the Procurement Officer determines that information submitted is not confidential, a Person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the Chief Procurement Officer (“CPO”).

5. A Procurement Officer may release information designated as confidential under this ABOR Policy 3-801(D) if:

   a. A request for review is not received by the CPO within the time period specified in the notice; or

   b. The CPO, after review, makes a written determination that the designated information is not confidential.

E. Miscellaneous Provisions

1. The term "may" denotes the permissive. The term "shall" denotes the imperative.

2. 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.

a. A University President, Board Executive Director or CPO may designate an individual or individuals to act on behalf of a CPO or a Procurement Officer in the absence or unavailability of such officer.

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Policy History

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| 12/15/1984 | Approved by the Board on second reading. Originally implemented as interim policies 9-101, 9-102, 9-103, and 9-104. |
| 7/13/1985 | Permanent policy 3-801 adopted by the Board. |
| 2/19/1988 | Policy revision approved by the Board on second reading. |
| 4/26/1996 | Policy revision approved by the Board on second reading. |
| 9/1/2000 | Policy revision approved by the Board on second reading. |
| 6/22/2006 | Policy revision approved by the Board on second reading. |
| 11/18/2016 | Policy revision approved by the Board on second reading. |
| 9/27/2018 | Policy revised to reflect “Executive Director” in place of “President.” |
| 10/1/2026 | Policy revision approved by the Board on second reading. |

Related Information