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### 3-803 Source Selection and Contract Formation

#### A. 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. 3-803B – Competitive Sealed Proposals
  - b. 3-803C.1 – Procurement not exceeding one hundred thousand dollars (\$100,000)
  - c. 3-803C.2 – Sole Source Procurement
  - d. 3-803C.3 – Emergency Procurement
  - e. 3-803C.4 – Procurement of livestock, animals, feed, etc.
  - f. 3-803C.5 – Procurement of Materials at auction or at commodity index – excluding real property
  - g. 3-803C.6 – Simplified Construction Procurement Program
  - h. 3-803D – Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel
  - i. 3-804B – Procurement of Professional Services and Construction Services
  - j. 3-808G – Intergovernmental and Cooperative Procurement
2. An Invitation for Bids shall be issued and shall include a Purchase Description and Contract terms and conditions applicable to the Procurement. The University shall include requirements to determine the responsibility and responsiveness of each Bid which may include criteria requirements to determine acceptability, such as inspection, testing, quality, certifications, workmanship, delivery and suitability for a particular purpose.
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

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Opening of Bids and in accordance with University Policies and Procedures, if any. The notice may include publication one or more times in a newspaper of general circulation a reasonable time before Bid Opening. If the Invitation for Bids is for the Procurement of Services other than CMAR Services, DB Services, Design Services, or those Services described in ABOR Policy 3-803D below, the notice shall include publication in a newspaper of general circulation within this state. The publication shall be not less than two weeks before Bid Opening. The notice may also be posted at a designated site on the internet.

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. To the extent a Bidder designates, and the University concurs that pursuant to ABOR Policy 3-801D, trade secrets or other proprietary data contained in the Bid documents are confidential, the University shall maintain such information or data as confidential. All other relevant information as may be specified by this Code and/or University Policies and Procedures and contained in the Bid documents shall become part of the Procurement file. The University will open the Procurement file to inspection by Interested Parties following the earlier of the issuance of a Notice of Intent to Award or the execution of the Contract.

Except as provided for herein, the Procurement file shall not be open for public inspection until after a Contract is executed. After a Contract is executed, the Procurement file shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

5. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids. The University may include requirements to determine acceptability, such as inspection, testing, quality, certifications, workmanship, delivery, suitability for a particular purpose, and standards for responsibility and responsiveness. The Invitation for

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Bids shall set forth the evaluation criteria, including the weighting of identified criteria. Evaluation criteria shall not be used for Invitations for Bid for Construction and no criteria may be used in evaluating Bids that are not set forth in the Invitation for Bids.

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 University Policies and Procedures. 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 Responsible and Responsive Bidder submitting the lowest price (the "Low Responsive and Responsible Bid(der)"). The amount of any applicable transaction privilege or use tax of a political subdivision of Arizona is not a factor in determining the Lowest Responsible and Responsive Bidder. If all Bids for a Construction Procurement 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 10 percent, the Procurement Officer may, in situations in which time or economic considerations preclude resolicitation of work or 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 it is not practical to initially prepare a definitive Purchase Description that 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 reasonably susceptible to being selected for an Award under the criteria set forth in the first Solicitation, except that the Multistep Sealed Bidding method may not be used for Construction Contracts.

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9. If the price of a Recycled Paper product that conforms to specifications is within 5 percent of a Low Bid product that 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 CPO may include in the University Policies and Procedures rules requiring a 5 percent preference for other products made from recycled materials.

B. Competitive Sealed Proposals

1. A Contract for Materials or Services may be procured by Competitive Sealed Proposals. This subsection does not apply to Procurement of Construction, Construction Services, Design Services or Professional Services, which shall be procured as prescribed in ABOR Policy 3-804.
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 3-803A.3
4. Proposals shall be opened publicly at the time and place designated in the Request for Proposals. The name of each Proposer shall be recorded. All other information contained in the Proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing Proposers during the process of Negotiation. To the extent that an Proposers designates, and the University concurs that, as set forth in ABOR Policy 3-801D, trade secrets or other proprietary data contained in the Offer documents are confidential, the University shall maintain such information or data as confidential. All other information as may be specified by this Code and/or University Policies and Procedures and contained in the Offer documents shall become part of the Procurement file. The University will open the Procurement file for inspection by Interested Parties following the earlier of the issuance of a Notice of Intent to Award or the execution of the Contract.

Except as provided for herein, the Procurement file shall not be open for public inspection until after a Contract is executed. After a Contract is executed, the Procurement file shall be open to public inspection, subject to any continuing prohibition on the disclosure of confidential data.

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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 pursuant to University Policies and Procedures, Discussions may be conducted with Responsible Proposers 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. Proposers 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 final Proposal revisions. If Discussions are conducted, all Proposers who have submitted Proposals that are determined by the Procurement Officer to be reasonably susceptible to being selected for Award shall be invited to submit a final Proposal revision. In conducting Discussions, there shall be no disclosure of any information derived from Proposals submitted by competing Proposers. The Award shall be made to the Responsive and Responsible Proposers 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 Arizona is not a factor in determining the most advantageous proposal. The Procurement file shall contain a written determination showing the basis on which the Award is made.
  
7. Notwithstanding any other provision in the University Procurement Code, a Contract for the Services of any financial consultant under circumstances not covered in ABOR Policy 3-803D shall be awarded through Competitive Sealed Proposals.
  - a. Prospective financial consultants may be prequalified pursuant to ABOR Policy 3-803.E.3 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

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approval of the Board.

C. Exceptions to Competitive Selection

1. Procurement not Exceeding one hundred thousand dollars (\$100,000)
  - a. Any Procurement, other than a Procurement for Construction, that does not exceed the aggregate dollar amount of one hundred thousand dollars (\$100,000), may be made in accordance with University Policies and Procedures, which shall provide that such Procurements will be made with such competition as is practicable under the circumstances. Any Procurement that does not exceed the aggregate dollar amount of one hundred thousand dollars (\$100,000) shall be restricted, if practicable, to Small Businesses. The Procurement Officer shall rotate the Small Businesses solicited to compete for any Procurement of one hundred thousand dollars (\$100,000) or less. If it is impracticable to restrict a particular Procurement to Small Businesses, the Procurement Officer must make a determination setting forth the reasons and place it in the Procurement file.
  - b. Procurement requirements shall not be artificially divided or fragmented so as to constitute a Procurement under this subsection and to circumvent the source selection procedures required by the Code. A Procurement involving Construction not exceeding one hundred thousand dollars (\$100,000) may be made pursuant to ABOR Policy 3-803C.6.

2. Sole Source Procurement

A Contract may be awarded for a Material, Service, Construction, or Construction Service without competition if the Procurement Officer determines in writing that there is only one source for the required Material, Service, Construction, or Construction Service. The Procurement Officer may require the submission of cost or pricing data in connection with an Award under this subsection. Sole Source Procurement shall be avoided except when no reasonable alternative source exists. A written determination of the

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basis for the Sole Source Procurement shall be included in the Procurement file.

3. Emergency Procurements

Notwithstanding any other provisions of the Code, a University President, the CPO or the President's Designee may make Emergency Procurements if there exists a condition that seriously threatens public health, welfare, safety, or University property, or if a situation exists which makes compliance with ABOR Policies 3-803B, 3-803C, or 3-804B impracticable, unnecessary or contrary to the public interest, as defined in University Policies and Procedures. 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 Procurement file.

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

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 Materials where the price of the Materials 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 and must be leased in accordance with the requirements of ABOR Policy 7-207.

6. Simplified Construction Procurement Program

A Procurement involving Construction not exceeding one hundred thousand dollars (\$100,000) may be made pursuant to University Policies and Procedures and shall be known as the Simplified

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Construction Procurement Program. At a minimum, the University Policies and Procedures shall require that:

- a. A list be maintained of pre-qualified Persons who desire to receive Invitations to Bid on Simplified Construction projects; additions shall be permitted throughout the year.
- b. The list of Persons be available for public inspection.
- c. Contracts be on forms approved by the CPO.
- d. All information submitted by Bidders pursuant to this section be confidential.
- e. All Bids be opened at a public Opening.
- f. All Persons desiring to submit Bids be treated equitably and the information related to each project be available to all eligible Persons.
- g. Competition be encouraged to the maximum extent possible.

7. Record of Procurement Actions

Each University CPO shall maintain a record listing all Sole Source and Emergency Procurements in excess of one hundred thousand dollars (\$100,000) 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.

D. 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



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procured in accordance with this subsection, except as authorized under ABOR Policy 3-803C

2. Persons engaged in providing the services specified in ABOR Policy 3-803D.1 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 who have submitted a statement of qualifications may at any time submit additional information or change information that was previously submitted.
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 Proposer.
4. The Selection Committee or Procurement Officer may conduct Discussions with any Proposer who submits a Proposal to determine the Proposer's qualifications for further consideration. Discussions shall not disclose any information derived from Proposals submitted by other Proposers.
5. The Award shall be made to the Proposer 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 3-803D 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 Procurement file.
6. No Contract for the services of legal counsel shall be awarded without the prior approval of the Board, the Board's General Counsel, or General Counsel to the University.
7. ABOR Policy 3-803D shall not preclude any University or the Board from employing professional personnel as employees of the Board or a University under the applicable conditions of service policies maintained by the Board.

E. Additional Provisions Related to Source Selection

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1. An Invitation for Bids, a Request for Proposals, a Request for Qualifications, or other Solicitation may be canceled or any Bids or Offers 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 Procurement file.
2. Responsibility of Bidders and Offerors
  - a. A Bidder or Offeror may be required to provide written certification of compliance with applicable Arizona licensing requirements with the submission of a Bid or Offer.
  - b. A written determination of nonresponsibility of a Bidder or Offeror shall be made in accordance with University Policies and Procedures. 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 ABOR Policy 3-803E.2.a, above, information furnished by a Bidder or Offeror pursuant to this ABOR Policy 3-803E.2 may only be disclosed with prior written consent of the Bidder or Offeror except to law enforcement agencies.
3. Prospective Contractors may be prequalified for particular types of Materials, Services, Construction, and Construction Services. 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 a finding of responsibility.
4. The Procurement Officer may require, in accordance with University Policies and Procedures, the submission of security to

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guarantee faithful Bid and Contract performance. In determining the amount and type of security required for each Contract, the Procurement Officer consider the nature of the performance and the need for future protection to the University. The requirement for security must be included in the Invitation for Bids or Request for Proposals.

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 Proposer shall, except as otherwise provided in ABOR Policy 3-803E.5.c. below, submit current cost or pricing data and shall certify that, to the best of the Proposer'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 Procurement authority, if the total Contract price is expected to exceed an amount established by University Policies and 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 pursuant to subsection a. of this ABOR Policy 3-803E.5, 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 Proposer 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 this ABOR Policy 3-803E.5 need not be applied to Contracts if any of the following apply:

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- (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 policy.
- (4) Contract price is supported by relevant, historical price data.
- (5) It is determined in writing in accordance with University Policies and Procedures that the requirements of this subsection may be waived, and the reasons for the waiver are stated in writing.

F. Contract Types and Terms

1. Types of Contracts. Subject to the limitations of this paragraph, any type of Contract that will promote the best interests of the University may be used, except that the use of a cost-plus-a-percentage-of-cost Contract is prohibited.
2. Cost Allocation. 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.
3. Multi-Term Contracts
  - a. Unless otherwise provided by law, a Contract for Materials, Services, or JOC Construction Services may be entered into for a period of time up to five (5) years as determined 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 CPO determines in writing that such a Contract would be advantageous to the University. Payment and performance obligations for succeeding fiscal periods

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are subject to the availability and appropriation of monies.

- b. Before the use of a multi-term Contract, it shall be determined in writing by the Procurement Officer 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 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 JOC 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.
- G. Inspection. 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.
- H. Right to Audit Records
- 1. 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.
  - 2. 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

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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 Subcontract.

- I. Reporting of Anticompetitive Practices. If for any reason collusion or other anticompetitive practices are suspected among any Bidders or Offerors, a notice of the relevant facts shall be transmitted to the University legal counsel and to the Counsel for the Board, who shall inform the Attorney General and take other such action as may be appropriate.
- J. Retention of Procurement Records. All University and Board 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.
- K. Public-Private Technology Financing Partnership Contracts
  - 1. 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 to this ABOR Policy 3-803K 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 this ABOR Policy 3-803K shall require each private partner to propose specific performance improvements and measurement approaches to be used to measure the value delivered by the private partner technology solution. The University shall include an assessment of the proposed value of the private partner 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 private partner shall provide for payment of fees on a contractually specific amount based on the achievement of measured performance improvements that are mutually agreed to

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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 Chief Procurement Officer or his or her designee:

- a. The terms of Contracts relating to the measurement of the performance improvement attributable to the private partner technology program.
- b. Payment of fees based on the achievement of the established performance measures.