3-804 Professional Services and Construction Services Procurement

Revision Dates

10/1/2026, 6/9/2022, 11/18/2016, 6/22/2006, 9/1/2000, 4/26/1996, 2/19/1988, 7/13/1985, 12/15/1984 (adopted)

A. Project Delivery Methods

1. A University may procure Professional Services, Construction and Construction Services, as applicable, under any of the following project delivery methods:

   a. Design-bid-build (DBB).

   b. Construction-manager-at-risk (CMAR).

   c. Design-build (DB).

   d. Job-order-contracting (JOC).

2. Construction, Construction Services and Professional Services for CMAR, DB and JOC project delivery methods shall be procured in accordance with section 3-804(B) of this Code, except for Procurements not exceeding $250,000, emergency procurements, and Simplified Construction Procurement Program procurements which are subject to the applicable provisions of ABOR Policy 3-803(C).

3. For the DBB project delivery method, the Procurement Officer shall procure:

   a. Design Services pursuant to ABOR Policy 3-804(B), except as otherwise provided in ABOR Policy 3-803(C)(1), (C)(2), and (C)(3).

   b. Construction by competitive sealed bidding, except as otherwise provided in ABOR Policy 3-803(C)(1), (C)(2), (C)(3) and (C)(6).

B. Procurement of Professional Services and Construction Services

1. Notice. A University shall provide notice, as required by this Code and by University Policies and Procedures, 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 this section.

2. Annual Request for Qualification. In addition to other Procurement methods allowed under this Code, for procurement of Professional Services if the Contract amount is $500,000 or less, the Procurement Officer shall encourage Persons engaged in the lawful practice of the profession to submit annually a statement of qualifications and experience. The Procurement Officer shall appoint an appropriately qualified Selection Committee for each Procurement, as determined by the Procurement Officer. One or more Contracts may be awarded under a Procurement of this type. The Selection Committee shall evaluate current statements of qualifications and experience on file with the University, and any other additional information requested. The Selection Committee may conduct interviews with at least three but no more than five Offerors regarding the Procurement and the relative methods of furnishing the required services and, if possible, shall select, in order of preference, one or more final lists of the Offerors 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 described in this subsection. For each Contract for Professional Services included in the Procurement, the Procurement Officer shall enter into Negotiations with the Offeror selected as the highest qualified. 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 Contract with the highest qualified Offeror at a price and on other terms the Procurement Officer determines to be fair and reasonable to the University, the Procurement Officer shall formally terminate Negotiations with that Offeror. The Procurement Officer may undertake Negotiations with the next most qualified Offeror, in sequence, until a fair and reasonable agreement is reached or a determination is made to reject all Offerors on the final list for the Contract.

3. For Contracts for more than $500,000 for Professional Services, and for all Construction Services, the University shall comply with the following procedures:

   a. Formation of Selection Committee. The Procurement Officer shall appoint an appropriate qualified Selection Committee for the Procurement of Professional Services or Construction Services. 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 members and shall include at least one 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 or consultants of the University. 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 costs 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 Contractor under a Contract awarded under that Procurement or provide Professional Services, Construction or Construction Services, Materials or Services under the Contract. This does not preclude a Design Professional who has been awarded a Contract for Design Services from sitting on the Selection Committee to select a CMAR for the same project for which the Design Professional has been awarded a Contract.

b. Selection Committee Responsibilities. The Selection Committee shall:

(1) Evaluate submittals: Evaluate the statements of qualifications and performance data that are submitted in response to the University's Request for Qualifications.

(2) Conduct Interviews: If included in the Request for Qualifications, the Selection Committee will select Offerors to be interviewed, based only on the selection criteria and relative weight of the selection criteria stated in the Request for Qualifications. The Selection Committee will conduct those interviews and prepare a final ranked list, pursuant to ABOR Policy 3-804(B)(3)(b)(3) below.

(3) Final List. After reviewing the statements of qualification, or, if interviews are conducted, after interviews, the Selection committee will create for each Contract a final list of the three Offerors the Selection Committee deems to be the most qualified to provide the Professional Services or Construction Services. The selection of the Offerors on the final list and the order of preference on that list must be based on demonstrated competence and qualifications only, based on the criteria and the weighting of the criteria

included in the Request for Qualifications. In the case of a Contract that will be negotiated under ABOR Policy 3-804(B)(7), the Selection Committee will rank the three Offerors on the final list in order of preference. If the Request for Qualifications solicited multiple Contracts, the Selection Committee shall select a 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.

(4) Fewer than three Responsible and Responsive Offerors. If only two Responsible and Responsive Offeror respond to the Request for Qualifications or if Offerors withdraw from the Procurement process so that there are only two Responsible and Responsive Offerors remaining, the Selection Committee may elect to proceed with the Procurement, including interviews and preparing the final list, with those two Offerors, or may re-advertise pursuant to section 3-804(B)(3). If only one Responsive and Responsible Offeror responds to the Request for Qualifications or if Offerors withdraw from the Procurement process for a Contract or multiple Contracts to be negotiated under ABOR Policy 3-804(B)(7) so that only one Responsive and Responsible Offeror remains in the Procurement process, the Selection Committee may elect to proceed with only one Offeror in the Procurement process and may direct the Procurement Officer to Award the Contract or Contracts to a single Offeror if the Procurement Officer determines in writing that the fee negotiated pursuant to section 3-804(B)(7) is fair and reasonable and either: i) other prospective Offerors had a reasonable opportunity to respond or, ii) there is not adequate time for a re-solicitation. If an Offeror 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 Offeror that submitted qualifications and that is selected by the Selection Committee as the next most qualified.

c. Request for Qualifications. A University shall issue a Request for Qualifications for each Contract and give public notice of the Request for Qualifications in the manner prescribed by this Code and by University Policies and Procedures. The Request for Qualifications shall include the criteria to be used to select the

Offeror to perform the Professional Services or the Construction Services, and the relative weight of the selection criteria and, if required under section 3-804(B)(4)(b)(2), that one of the criteria will be the Offeror's Subcontractor selection plan or procedures to implement the University's Subcontractor selection plan.

d. Interviews. If the University will hold interviews as part of the selection process, interviews shall be held with at least three and no more than five Offerors, except that if multiple Contracts are being procured under a single Request for Qualifications under ABOR Policy 3-804(B)(3) or a single Request for Qualifications and Request for Proposals solicitation under ABOR Policy 3-804(B)(3) and (B)(8) the number to be interviewed shall be at least three and not more than the number of Contracts plus two.

e. Multiple Contracts. A University may procure multiple Contracts under a single Request for Qualifications or, for JOC Construction Services, under a single Request for Qualifications and Request for Proposals Procurement process as provided for in this Code. 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 3-804(B)(7) or a separate Request for Proposals under ABOR Policy 3-804(B)(8) 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 or a single Request for Proposals competition under ABOR Policy 3-804(B)(8).

(3) The University may Award all of the multiple Contracts to one Contractor or may Award the multiple Contracts to multiple Contractors.

f. Multiple Contracts for Professional Services. For Professional Services, a University may procure multiple Contracts using a single Request for Qualifications except that Professional Services that are part of DB Construction Services may only be procured as

part of the DB Construction Services Procurement. Each of the multiple Contracts for Professional Services must have a term not exceeding five years and may continue in effect after the five-year term for Professional Services on projects commenced within the five-year term.

g. For CMAR Construction Services and for DB Construction Services, a University may procure multiple Contracts using a single Request for Qualifications or for DB Construction Services using a single Request for Qualifications and Request for Proposals, but in either case only for a specific single project, portions of the specific single project shall be allocated to separate contracts.

4. Subcontractor Selection. For CMAR Construction Services, DB Construction Services and JOC Construction Services, if the Contract or Contracts will be negotiated under ABOR Policy 3-804(B)(7), or for JOC Construction Services if the Contract will be awarded pursuant to ABOR Policy 3-804(B)(8):

a. The Offeror 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.

b. The University shall include in the Request for Qualifications either:

(1) A requirement that each Offeror 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 Offeror’s proposed Subcontractor selection plan; or

(2) A Subcontractor selection plan adopted by the University that will apply to the Offeror 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 Offeror 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 Qualifications, an evaluation of each Offeror's proposed procedures to carry out the University's Subcontractor selection plan.

c. The University shall include in its Contract with the selected Offeror either:

(1) If the University included its Subcontractor selection plan in the Request for Qualifications, the University's Subcontractor selection plan and the procedures proposed by the selected Offeror in submitting its qualifications with those modifications to the procedures as the University and the selected Offeror agree.

(2) If the University did not include its Subcontractor selection plan in the Request for Qualifications, the Subcontractor selection plan proposed by the selected Offeror in submitting its qualifications with those modifications as the University and the selected Person agree.

d. In making the selection of Subcontractors, the Offeror selected to perform the Construction Services shall use the Subcontractor selection plan and any procedures included in its Contract.

5. 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 3-804(B)(3) and (4), including in the selection of the Offerors to be interviewed, the selection of the Offerors to be on the final list, in determining the order of preference of Offerors on the final list or for any other purpose in the selection process. Fees, price, man-hours, and any other cost information shall only be considered in the Negotiation process.

6. The Procurement Officer shall Award a Contract for Professional Services or Construction Services to one of the Offerors on the final list for that Contract prepared as set forth in this ABOR Policy 3-804(B).

7. Contract Negotiations and Execution. For each Contract included in the Request for Qualifications for Professional Services or Construction Services, the Procurement Officer shall enter into separate Negotiations for the Contract with the highest qualified Offeror on the final list for that Contract determined pursuant to this ABOR Policy 3-804(B). If the Request for Qualifications is for multiple Contracts and specifies that all of

the multiple Contracts will be awarded to a single Contractor, there may be a single Negotiation for all of the multiple Contracts. 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 decision, the Procurement Officer shall take into account the estimated value, the scope, the complexity and the nature of the Professional Services or Construction Services to be rendered. If the Procurement Officer is unable to negotiate a satisfactory Contract with the highest qualified Offeror 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 Offeror. The Procurement Officer may undertake Negotiations with the next most qualified Person on the final list in sequence until a fair and reasonable agreement is reached or a determination is made to reject all Offerors on the final list. If a Contract for Construction Services is entered into pursuant to this subsection:

a. Preconstruction Services and Guaranteed Maximum Price (GMP). If the Contract is for CMAR Construction Services and includes Preconstruction Services by the Contractor or if the Contract is for DB 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 GMP 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 agreed to a Preconstruction Services fee.

b. Construction. Construction shall not commence until the University and Contractor agree in writing on either a fixed price or a GMP that the University will pay for the Construction to be commenced.

8. Multi-Step Selection Process. As an alternative to entering into Negotiations pursuant to ABOR Policy 3-804(B)(7), above, the Procurement Officer may Award DB Construction Services or JOC Construction Services as follows:

a. The Procurement Officer shall use the Selection Committee appointed for the Request for Qualifications pursuant to ABOR Policy 3-804(B)(3).

b. The Procurement Officer shall issue a Request for Proposals to the Offerors on the final list developed pursuant to ABOR Policy 3-804(B)(3).

c. 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 Offeror whose Proposal receives the highest ranking 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 DB Construction Services only, demonstrated compliance with the project requirements.

(b) Offeror qualifications.

(c) Offeror financial capacity.

(d) Compliance with the University's project schedule.

(e) For DB 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 DB Construction Services, if the Request for Proposals does not contain the Specifications prescribed in ABOR Policy 3-804(B)(8)(c)(3)(e) above, and for JOC 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 DB Construction Services only, the project 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 project requirements in the Request for Proposals. For DB Construction Services, the price in the price proposal shall be a fixed price or a guaranteed maximum price.

(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 3-804(B)(8)(e) below, 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 Procurement Officer conducts Discussions pursuant to ABOR Policy 3-804(B)(8)(e) below, each Offeror shall submit a preliminary Technical Proposal to the University before the Discussions are held.

e. If the Procurement Officer includes it in the Request for Proposals, the Selection Committee shall conduct Discussions with all Offerors 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.

f. After completion of any Discussions pursuant to ABOR Policy 3-804(B)(8)(e) above, 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 Procurement file(s) shall contain the basis on which the Award is made.

k. For DB 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 of one percent of the project final design and Construction budget to each final list Offeror who provides a 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 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 university 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.

9. Disclosure of Information. Except as provided for in ABOR Policy 3-803(A)(4) and 3-803(B)(4), until Award and execution of a Contract by a University, only the name of each Offeror on the final list developed pursuant to the Solicitation may be made available to the public and 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 or the University during the selection process. The Proposals shall be open to public inspection after the Contract is awarded and fully executed. Notwithstanding the foregoing, the University will make the Procurement file open to inspection by Interested Parties following the earlier of the issuance of a Notice of Intent to Award or the execution of the Contract. To the extent that the Offeror designates and the University concurs, pursuant to Policy 3-801(D), trade secrets and other proprietary data contained in a Proposal remain confidential.

10. Cancellation. A University may cancel a Request for Qualifications or a Request for Proposals or reject in whole or in part any or all Offers 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 Procurement file.

11. Notwithstanding any other law or provisions of this Code:

    a. The Contractor for DB or JOC Construction Services is not required to be registered to perform Professional Services pursuant to A.R.S. § Title 32, Chapter 1 if the Person actually performing the Professional Services on behalf of the Contractor is appropriately registered.

    b. The Contractor for CMAR, DB, or JOC Construction Services shall be licensed to perform Construction pursuant to A.R.S. § Title 32, Chapter 10.

12. For JOC Construction Services only:

    a. The maximum dollar amount of an individual job order shall be one $4,000,000. 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 JOC 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 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.

c. 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:

(1) 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.

(2) The number of units of each standard individual task that is included in the job order and that the Subcontractor is invited to perform.

(3) The standard unit price for each standard individual task that is included in the job order and that the Subcontractor is invited to perform.

13. Notwithstanding anything to the contrary in ABOR Policy, a University shall not:

a. Enter into a Contract as a contractor to provide CMAR Construction Services, DB Construction Services or JOC Construction Services.

b. Contract with itself, with another University, with the State of Arizona, or with any other governmental unit of the State of Arizona or the federal government for the university to provide CMAR Construction Services, DB Construction Services, or JOC Construction Services.

14. The prohibitions prescribed in ABOR Policy 3-804(B)(13) do not prohibit a

University from providing Construction for itself as provided by law.

15. 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 University or Board owned building 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 acquired by bid, does not exceed $50,000.

2. The provisions of ABOR Policy 3-803(F) 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 or consultant shall remain confidential until after the Bid or Offer Opening, except when disclosed as provided in ABOR Policy 3-804(B).

4. The University shall advise the construction manager or the 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 and 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 by a University if the University estimates that the budget for Construction, excluding the cost of Finance Services, Maintenance Services, Operations Services, Preconstruction Services, Professional Services, and any other related Services included in the Contract, will be more than the amount established in ABOR Policy 3-803(C)(6). 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 DBB Construction, 10 percent of the Contractor's Bid.

b. For DB Construction Services procured through a Request for Proposals, 10 percent 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 Services, Preconstruction Services, Professional Services, and any other related Services included in the Contract.

c. For JOC Construction Services, the amount prescribed by the University in the Request for Proposals, but not more than 10 percent 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, Professional 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 Solicitation requires bid security, failure to provide proof of bid security at the time of Bid Opening requires that the Bid or Offer be rejected. If the bid security fails to comply with the requirement, but such failure is non-substantive, the Chief Procurement Officer may issue a written determination to accept the bid security if the following conditions exist:

   a. Only one Bid or Offer is received and there is not sufficient time to re-solicit;

   b. The amount of the bid security submitted, although less than the amount required by the Solicitation, is equal to or greater than the difference between the apparent low Bid or Offer and the next higher acceptable Bid or Offer; or

   c. The bid security is inadequate as a result of correcting or modifying a Bid or Offer in accordance with this Code, if the Bidder or Offeror increases the amount of the security to required limits within two days after notification.

5. After the Bids or Offers are opened, they are irrevocable for the period

stated in the Solicitation, except as provided in ABOR Policy 3-803(A)(6) as to Bids, and ABOR Policy 3-804(B)(6) as to Offers. If a Bidder or Offeror is permitted to withdraw its Bid or Offer before Award, no action may be had against the Bidder, Offeror, or the bid security.

E. Contract Performance and Payment Bonds

1. The following bonds are required if the value of a Construction Contract exceeds the amount established by ABOR Policy 3-803(C)(1). The University shall specify the form of any bonds required by this Code.

a. A performance bond satisfactory to the University, executed by a surety company authorized to do business in Arizona, in an amount equal to 100 percent of the amount specified in the Contract,

(1) except that, for JOC Construction Services, the performance bond:

(a) shall cover the full amount of Construction,

(b) shall not include any Professional 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 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 CMAR Construction Services, and DB Construction Services, the amount of the performance bond shall be the price of Construction and shall not include the cost of any Professional Services, Preconstruction Services, Finance Services, Maintenance Services, Operations Services, and other related Services included in the Contract.

b. A payment bond satisfactory to the University, executed by a surety company authorized to do business in Arizona, 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 100 percent of the price specified in the Contract:

(1) except that, for JOC Construction Services, the payment bond:

(a) shall cover the full amount of Construction,

(b) shall not include any Professional 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 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 CMAR Construction Services and DB Construction Services, the amount of the payment bond shall be the price of Construction, excluding the cost of any Professional Services, Preconstruction Services, Finance Services, Maintenance Services, Operations Services and any other related Services included in the Contract.

For DBB Construction, the performance bond and the payment bond shall be delivered by the Contractor to the University before or at the time the Contract is executed. For CMAR, DB and JOC Construction Services, the performance bond and the payment bond shall be provided before or at the time of execution of the 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. For a DBB project, if a Contractor fails to deliver the required payment and performance bonds, 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. This Policy shall not be construed to limit the authority of the University to require a payment or performance bond or in circumstances other than as specified herein.

2. Any Person who furnished labor or material to the Contractor or its Subcontractors for the work provided in the Contract in respect to which a payment bond is furnished and who is not paid in full within 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 upon giving the Contractor a written preliminary 20-day 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 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.

3. Any suit instituted on a payment bond shall be brought in the Superior Court in the county in which the Construction Contract was 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 University need not be joined as a party in the suit.

F. Contract Payment Retention

1. Ten percent 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 Board or pursuant to a University Policies and Procedures. When the Contract is 50 percent completed, one-half 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 50 percent completed, no more than five percent 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 10 percent retention may 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 60 days after final completion and acceptance of work under the Contract. Retention of payments by a University longer than 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 60 days which are in excess of the amount necessary to pay the expenses the University reasonably expects to incur in order to pay 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 this ABOR Policy 3-804(F), any Subcontractor undertaking to perform any part of the Contract is entitled to provide such substitute security to the Contractor.

2. Notwithstanding anything to the contrary in ABOR Policy:

   a. There shall be no retention for JOC Construction Services Contracts and the University may elect to have no retention for CMAR and DB Construction Services

   b. This Policy 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 Professional Services, Preconstruction Services, Finance Services, Maintenance Services, Operations Services and any other related Services included in the Contract.

G. Progress Payment

1. Progress payments may be made by a University to the Contractor on a monthly basis 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 3-804(F). The progress payments shall be paid on or before 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 in proper form 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 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 University may withhold an amount from the progress payment sufficient to pay the expenses the university 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. 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 its Subcontractors and material suppliers, and each Subcontractor shall pay its Subcontractors or material suppliers, within seven 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 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.

3. A Subcontractor may notify the University in writing requesting that the Subcontractor be notified by the University in writing within five 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 this 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 University.

5. If any payment to a Contractor is delayed after the date due, interest shall be paid at the rate of one percent 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 days after receipt of periodic or final payment by the Contractor or a Subcontractor, the Contractor or Subcontractor shall pay the Subcontractor or Subcontractor's subcontractor or material supplier interest, beginning on the eighth day, at the rate of one percent per calendar month or a fraction of a calendar month on such unpaid balance as may be due.

7. Notwithstanding anything to the contrary in this Code, this ABOR Policy 3-804(G) 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 Professional Services, Preconstruction Services, Finance Services, Maintenance Services, Operations Services, or any other related Services included in the Contract.

Policy History

12/15/1984	Approved by the Board on second reading. Originally implemented as interim policies 9-401, 9-402, 9-403, 9-404, and 9-405.
7/13/1985	Permanent policy 3-804 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.
10/1/2026	Policy revision approved by the Board on second reading.

Related Information