

**PIMA ASSOCIATION OF GOVERNMENTS**



**Procurement Guidelines**

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**Pima Association of Governments**

177 N. Church Ave., Suite 405

Tucson, Arizona 85701

520-792-1093

[www.pagnet.org](http://www.pagnet.org)

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## Section 1 - Definitions

- 1.1** “**Change Order**” means a written order signed by the Executive Director or Chief Procurement Officer that authorizes and directs a contractor or vendor to make changes to an original scope of work.
- 1.2** “**Chief Procurement Officer**” means the Executive Director or the person designated by the Executive Director to perform the duties of conducting procurements as specified herein in the capacity of Chief Procurement Officer. The Chief Procurement Officer serves as the lead administrative staff person in conducting procurements on behalf of PAG and may be assisted by designated Purchasing Agents.
- 1.3** “**Construction**” means all work subject to the requirements of Arizona Revised Statutes, Title 34, including building, improving, altering, repairing, maintaining or demolishing any public building, highway, bridge or other real property structure.
- 1.4** “**Contract**” means all types of written agreements, regardless of what they may be called, for the procurement of materials, services or construction.
- 1.5** “**Contract Amendment**” means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
- 1.6** “**Day**” means a Monday through Friday from 8:00 a.m. – 5:00 p.m. excluding holidays as provided by law.
- 1.7** “**Direct Grant**” means a grant received directly by PAG from a primary grantor.
- 1.8** “**Executive Director**” means the Executive Director of PAG.
- 1.9** “**Federal Cost Principles**” means the applicable federal cost principles for PAG as contained in the US Office of Management and Budget Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments).
- 1.10** “**FHWA**” means the Federal Highway Administration of the United States Department of Transportation.
- 1.11** “**FTA**” means the Federal Transit Administration of the United States Department of Transportation.
- 1.12** “**FAA**” means the Federal Aviation Administration of the United States Department of Transportation.
- 1.13** “**Grant**” means any contributions or gifts of cash or other assets from a Federal, State of Arizona or local

## Section 1 – Definitions

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government agency or a private corporation or individual to be used or expended for a specific purpose, program, activity, task or facility. Grant funding may be considered either direct or pass-through.

- 1.14 “Grantee”** means a recipient of a grant received directly from a grantor.
- 1.15 “Grantor”** means a Federal, State of Arizona or local government agency or a private corporation or individual contributing funds to PAG under a grant agreement.
- 1.16 “Materials”** means all property, including equipment, supplies, printing, and leases of property, but does not include land, a permanent interest in land or real property or leasing space.
- 1.17 “PAG”** means the Pima Association of Governments.
- 1.18 “Pass-through Grant”** means a grant not received directly by PAG from the primary grantor but from a grant recipient serving in a fiduciary capacity for the primary grantor.
- 1.19 “Person”** means any corporation, business, individual, union, committee, club, other organization or group of individuals.
- 1.20 “Procurement”** means buying, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the obtaining of any material, service or construction, including description of requirements, selection and solicitation or sources, preparation and award of a contract, and all phases of contract administration.
- 1.21 “Professional Services”** are services involving specialized knowledge, skill and expertise provided by persons with advanced training and experience in a field that requires an extended course of specialized instruction and study.
- 1.22 “Purchasing Agent”** means the person authorized by the Executive Director or Chief Procurement Officer to perform certain duties in conducting procurements as specified herein in the capacity of a Purchasing Agent. Purchasing Agents assist the Chief Procurement Officer and serve as the lead program staff persons in specific procurement actions.
- 1.23 “Purchase Order”** means a written agreement, regardless of what it may be called, signed by the Executive Director, Chief Procurement Officer or a Purchasing Agent to procure a given quantity of materials, or services at a given unit price from a vendor.
- 1.24 “Real Property”** means property in leasehold improvements, buildings and land.

## Section 1 – Definitions

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- 1.25** “**Regional Council**” means the Regional Council, the governing body, of the Pima Association of Governments.
- 1.26** “**Request for Proposals**” means all documents whether attached or incorporated by reference, used for soliciting proposals through the competitive sealed proposals process.
- 1.27** “**Requests for Quotations**” means the documentation or method used in the process of competing for purchases that are lower than the dollar amount requiring submission of sealed bids or proposals.
- 1.28** “**Responsible Bidder or Offeror**” means a person who has the capability to perform the contract requirements and the reliability and integrity that will assure good faith performance.
- 1.29** “**Responsive Bidder or Offeror**” means a person who has submitted a bid or proposal that conforms with all material respects to the solicitation.
- 1.30** “**Services**” means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports, plans, or documents and performance. The term includes professional services.
- 1.31** “**Solicitation**” means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request by which PAG invites a person to participate in a procurement.
- 1.32** “**Specification**” means any description of physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery. It includes statements or scopes of work often used in solicitations for professional services.
- 1.33** “**Subcontractor**” means a company or person who contracts to perform work or render service to a contractor or as a sub-contractor as a part of a contract with PAG.
- 1.34** “**Subgrantee**” means a recipient of a grant not directly received from a grantor, but as a pass-through grant.

## **Section 2 - General Provisions**

### **2.1 Applicability and types of funds**

Except as provided in Section 2.2, these guidelines apply to the expenditure of funds, including federal grant funds, by PAG. To the extent that the requirements of any non-federal grant or gift mandate procurement procedures that conflict with those set forth in these guidelines, the requirements of the non-federal grant or gift shall prevail.

### **2.2 Exempt procurements**

Contracts for the items specified below shall be exempt from the provisions of these guidelines:

- Legal services;
- Arbitrator or mediator services;
- Hearing officer services;
- Settlement of administrative claims, prospective litigation or litigation;
- Services of professional witnesses if the purpose of the contract is to provide for professional service or testimony relating to an existing or probable administrative or judicial proceeding in which PAG is or may become a party;
- Postage, utilities, office and storage space rent, travel, education and training, fees and dues, and books and subscriptions;
- Risk management services and insurance; and
- Agreements with governmental agencies.

### **2.3 Authority to contract**

#### **2.3.1 Generally**

The authority to conduct procurements and sign contracts and amendments, including those that the Regional Council has approved as described in Section 2.4, shall reside with the Executive Director or his designee. in accordance with these guidelines.

**2.3.2 Formal procurements (expected to equal or exceed \$50,000)**

By virtue of the Regional Council's approval of these guidelines, the authority to conduct formal procurements expected to equal or exceed \$50,000 may be delegated by the Executive Director to the Chief Procurement Officer. The authority to sign contracts and purchase orders resulting from those procurements and contract amendments and change orders shall remain with the Executive Director or his designee.

**2.3.3 Informal procurements (expected to be less than \$50,000)**

By virtue of the Regional Council's approval of these guidelines, the authority to conduct informal procurements expected to be less than \$50,000 may be delegated by the Executive Director to the Chief Procurement Officer or other designee. The authority to sign contracts and purchase orders resulting from those procurements and contract amendments and change orders shall remain with the Executive Director or his designee.

**2.4 Regional Council approval of contracts and amendments**

The Regional Council shall approve procurements that are expected to equal or exceed \$50,000 before the Executive Director or Chief Procurement Officer initiates them. The Regional Council shall also approve monetary change orders or amendments to existing contracts that increase the contract price by 20 percent or \$50,000, whichever is greater, before the Executive Director or Chief Procurement Officer proceeds with the change order or amendment.

## Section 3 - Ethical Standards

### 3.1 General standards

#### 3.1.1 *Business Ethics Policy:*

PAG desires to conduct its business affairs in a professional manner consistent with its public service roles and responsibilities. PAG wishes to ensure that all PAG business is conducted in strict accordance with applicable laws, regulations, codes of conduct, and in keeping with the highest level of ethics.

In all matters pertaining to the operation of PAG, employees must avoid any undisclosed, unapproved relationship or engage in any activity that might:

- Involve or lead to a personal obligation which could impair the objectivity of such employee's judgment; or
- Imply to others that favoritism or obligations exist between PAG or its employees and any other party.

The proper operation of PAG requires:

- That decisions and policy be made and passed through proper supervisory channels;
- That PAG's offices and positions not be used for private gain; and
- That the public has confidence in the integrity of PAG.

Even though the provisions of the Arizona Revised Statutes dealing with conflicts of interest do not strictly bind PAG, it is PAG's intent that they guide PAG employees in determining what is and what is not a conflict of interest.

PAG employees should insulate themselves from the creation of conflicts by being continually alert as to the possibility of a conflict and, when in doubt, seek an appropriate review of the situation.

PAG employees must not participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved, unless such participation was first disclosed and approved by the Executive Director or the Regional Council. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the individual or firm selected for award:

### Section 3 – Ethical Standards for Employees

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- The employee or agent;
- Any member of the immediate family of any employee or agent;
- The partner of any employee or agent; or
- An organization which employs, or is about to employ, any of the above.

Any interest as an owner, partner, joint venturer or stockholder of two (2) percent or less in any such organization is not deemed a prohibited financial interest.

All gifts or other gratuities from any party having or seeking to establish a relationship with PAG are discouraged and contrary to this declared policy. This policy is not intended to prohibit ordinary and accepted courtesies that would be normally and regularly received, but it is intended to prohibit receipt of compensation or anything of value for the performance of employment duties. Proper personal conduct requires that:

- Gifts or other gratuities that might adversely affect the exercise of an employee's judgment in matters pertaining to PAG or might impair public confidence in PAG must not be solicited or accepted;
- Entertainment in any form must not be accepted if either party might feel an obligation or if a third party might infer that an obligation exists;
- If luncheon or dinner meetings occasionally are desirable for the conduct of business, PAG should pay the expenses of an appropriate share of such meetings; and
- PAG employees should neither solicit nor accept gratuities, discounts, favors, hospitality or anything of monetary value from contractors or potential contractors.

It is improper for PAG employees to use confidential information acquired in the course of their employment for any personal gain.

It is not PAG's desire to discourage or limit the freedom of PAG employees to engage in and maintain outside activities and interests that do not interfere with the performance of their duties. It is only when there is a possible conflict of interest that PAG is concerned. Where a conflict or potential conflict does develop, the employee should disclose promptly and fully to the Executive Director any and all pertinent facts – the questionable as well as the obviously objectionable. In many instances, the only consequences may be disqualification of the employee from participating in a particular transaction or a finding that the condition appearing questionable to an employee is not significant. In other cases, it may prove advisable for the employee to dispose of the outside interest or that

other measures be taken.

Violation of this policy by a PAG employee shall be cause for disciplinary action.

### **3.1.2 Definitions**

The meaning of the terms used in Section 3.1.1 shall be those definitions set forth in Arizona Revised Statutes §38-502.

### **3.2 Conflict of interest provisions of A.R.S. §38-511**

The Executive Director or Regional Council may cancel a contract under the provisions of Arizona Revised Statutes §38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating a contract on PAG's behalf is, during the contract duration including extensions:

- An employee or agent of any other party to the contract in any capacity; or
- A consultant to any other party to the contract concerning the contract's subject matter.

### **3.3 Conflict of interest/nondisclosure statements**

The Chief Procurement Officer shall require any person who serves on any advisory committee established to assist in evaluating competing bids or proposals to sign a statement before receiving bids or proposals certifying that he or she:

- Does not have a conflict of interest concerning the procurement;
- Shall not discuss the procurement with any competing vendor except as permitted in discussions that these guidelines permit; and
- Shall not disclose information contained in the bids or proposals to any person other than the Executive Director, Chief Procurement Officer, Purchasing Agent, or other members of the advisory evaluation committee during the procurement process.

## **Section 4 - The Procurement Process**

### **4.1 Goals**

The overall goal of the procurement process is to foster the most competitive process practicable under the circumstances. The purpose of this goal is to increase the likelihood that PAG will acquire the specified quality and quantity of goods and services for the best value under the prevailing conditions at the time of purchase and to comply with all applicable federal, state and local laws and regulations. All procurement transactions are to be conducted in a manner that provides for full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to the following:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excess bonding;
- Noncompetitive pricing practices between firms and between affiliated companies;
- Noncompetitive awards to consultants that are on retainer contracts; and
- Organizational conflicts of interest.

Additional goals of the procurement process are to avoid the purchase of unnecessary or duplicative items, to foster economy and efficiency by encouraging the use of State and local intergovernmental agreements for the procurement or use of common goods and services; and encourage the use of Federal excess and surplus property in lieu of purchasing new equipment whenever such use is feasible and reduces project costs.

### **4.2 Dollar limits for formal and informal procurements**

Procurements expected to equal or exceed \$50,000 shall be made in accordance with one of the procedures set forth in Sections 4.3 (Invitation for Bids), 4.4 (Request for Proposals), 4.6 (Procurements Using Federal or State Contracts) or 4.7 (Sole Source Procurements) of this Section. The procedures set forth in Section 4.5 (Informal Procurement by Small Purchase Procedures) shall not be used in procurements expected to equal or exceed \$50,000.

### **4.3 Formal procurement by competitive sealed bidding (Invitation for Bids)**

A typical example of procurement under a “competitive sealed bid” would be the bulk purchase of more than

\$50,000 for homogeneous items, such as office supplies, computers, etc. These bids are publicly solicited and a firm fixed-price (lump sum or unit price) contract is normally awarded to the responsible bidder whose bid conforms to all of the material terms and conditions of the invitation for bids and is the lowest in price.

#### **4.3.1 Contents of the invitation for bids**

The Chief Procurement Officer shall prepare and issue an Invitation for Bids (IFB) for procurements conducted through competitive sealed bidding. For procurements for construction, the Chief Procurement Officer shall comply with the requirements of Arizona Revised Statutes, Chapter 34, Chapter 2, Public Buildings and Improvements, to the extent those statutes conflict with or add to these guidelines.

The Invitation for Bids shall include the following:

- Instruction and information concerning the bid submission requirements, including the time and date set for bid opening, the address of the office where the bids are to be received, the period of time that the bid shall remain open, the location and the date and time of any pre-bid meeting or site visit, and any other special information;
- The purchase description, specifications, evaluation criteria, delivery or performance schedule, plans and drawings, and inspection and acceptance requirements;
- A statement that a firm fixed-price contract shall be used, if awarded;
- A statement in the instructions to bidders advising that PAG reserves the right to cancel the solicitation in part or in whole at any time, and to reject all bids;
- A form or other space for the bidder's initial price and for prices, percentages or rates for any periods of contract extension or renewal;
- The contract terms and conditions, including those required by Section 6.2, warranty, contract duration and periods of extension or renewal, and bonding or other security requirements, as applicable.

If the Invitation for Bids incorporates documents by reference, it shall specify where those documents may be obtained.

An Invitation for Bids may require the submission of bid samples, descriptive literature and technical data and may require inspection or testing of a product before award.

#### **4.3.2 Notification of invitation for bids**

At a minimum, the Chief Procurement Officer shall advertise the Invitation for Bids in a newspaper of general circulation no later than 21 days before the bid opening date unless a shorter time is determined to be necessary by the Executive Director.

#### **4.3.3 Addendum to invitation for bids**

An addendum to an Invitation for Bids shall be used if necessary to:

- Make changes in the Invitation for Bids;
- Correct defects or ambiguities;
- Furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of information will prejudice the other bidders; or
- Inform bidders of alternate materials accepted for bid.

The Chief Procurement Officer shall specifically identify the addendum as an addendum to the Invitation for Bids and shall send it to all persons to whom the Invitation for Bids was distributed.

The Chief Procurement Officer shall issue the addendum within a reasonable time before bid opening to allow prospective bidders time to consider it in preparing their bids. If the time and date set for the bid opening does not permit sufficient time for bid preparation, that time and date shall be extended in the addendum and, if necessary, communicated by telegram, facsimile, e-mail or telephone and confirmed in the addendum.

#### **4.3.4 Pre-bid conference**

The Chief Procurement Officer, assisted by a Purchasing Agent, may conduct a pre-bid conference within a reasonable time but no later than ten (10) days before bid opening to discuss the procurement requirements and solicit comments from prospective bidders unless the Executive Director approves a shorter time.

#### **4.3.5 Pre-opening modification or withdrawal of bids**

A bidder may modify or withdraw its bid at any time before bid opening if the Chief Procurement Officer receives the modification or withdrawal request in writing before the time and date set for bid opening.

Any request to withdraw or modify a bid received before the bid opening date shall be in writing and signed by an authorized agent of the bidder.

All documents concerning a modification or withdrawal of a bid shall be retained in the appropriate procurement file.

**4.3.6 Late bids, late withdrawals, and late modifications**

A bid, modification or withdrawal is late if it is received at the location designated in the Invitation for Bids for receipt of bids after the time and date set for bid opening.

The Chief Procurement Officer shall reject a late bid, late modification, or late withdrawal unless the modification or withdrawal is received before contract award at the location designated in the Invitation for Bids for receipt of bids and would have been timely received but for the action or inaction of PAG.

Bidders submitting bids, modifications or withdrawals that are rejected as late shall be notified as soon as practicable.

The Chief Procurement Officer shall retain in the procurement file a copy of the envelope or other document showing the time and date that the Chief Procurement Officer received a late bid, late modification, or late withdrawal, and any additional information necessary to identify the bidder and the solicitation to which the bid was submitted. The Chief Procurement Officer shall return unopened the late bid, late modification or late withdrawal to the bidder submitting it. If it was necessary to open the late bid, late modification or late withdrawal in order to identify it, the Chief Procurement Officer shall retain that bid, modification or withdrawal in the procurement file.

**4.3.7 Receipt, opening, and recording of bids**

Each bid and modification shall be date and time-stamped upon receipt and stored unopened in a secure place by the Chief Procurement Officer until the time and date set for bid opening.

Bids and modifications shall be opened publicly at the time, date and location designated in the Invitation for Bids. The name of each bidder and the bid price shall be read aloud and recorded at the time of bid opening.

After notice of a proposed contract award has been sent to bidders participating in the procurement, the bids shall be available for public inspection except to the extent that the withholding of information is permitted or required by law.

#### **4.3.8 Mistakes in bids**

A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting its bid.

After bid opening, a bidder may not correct or withdraw a bid mistake based on an error in judgment. Errors in judgment are those requiring the exercise of bidder discretion, for instance, those that relate to pricing strategies rather than to clerical or mathematical error. Non-judgmental bid mistakes may be corrected or withdrawn pursuant to the following:

- The Chief Procurement Officer may either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to PAG. Nothing in this section shall be construed as requiring the Chief Procurement Officer to waive any informalities or to allow their correction.
- If a mistake and the intended bid are evident on the face of the bid, the bid may not be withdrawn and shall be corrected to the intended bid.

The Chief Procurement Officer may permit a bidder to withdraw a bid if:

- A non-judgmental mistake is evident on the face of the bid but the intended bid is not evident; or
- The bidder establishes by clear and convincing evidence that a non-judgmental mistake was made.

In the event of a discrepancy between the unit price and its extension in the bid, the unit price shall govern.

Mistakes shall not be corrected after award of the contract except where the Executive Director prepares and issues a written determination that it would be in PAG's best interest to permit correction, and the basis for the decision.

If correction or withdrawal of a bid after the bid opening is permitted or denied the Chief Procurement Officer shall prepare and issue a written determination showing that the relief was permitted or denied, and the basis for the decision.

#### **4.3.9 Bid evaluation and award**

The contract shall be awarded to the responsible bidder submitting the lowest responsive bid that meets the requirements and evaluation criteria set forth in the Invitation for Bids. Prices bid for contract extensions or renewals shall also be considered in determining which is the lowest responsive bid.

## Section 4 – The Procurement Process

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A product acceptability evaluation shall be conducted solely to determine whether a bidder's product is acceptable as set forth in the Invitation for Bids. Any bidder's offering that does not meet the acceptability requirements shall be rejected as non-responsive.

Bids shall be evaluated to determine which bidder offers the lowest cost to PAG in accordance with evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include transportation cost, energy cost, ownership cost and other identifiable costs or life cycle cost formula. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information PAG has available concerning future use.

A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids unless the bidder is also the lowest bidder. Negotiation with bidders is not permitted under the competitive sealed bid procurement method of procurement.

In the event two or more responsive bids from responsible bidders are identical in price and meet all the requirements and criteria set forth in the Invitation for Bids, the tie shall be broken according to the following factors in order of priority:

- Location of the bidder, with priority given to those located in Pima County and the State of Arizona in that order; or
- Toss of a coin.

A record showing the basis for determining the successful bidder shall be retained in the procurement file.

The Chief Procurement Officer shall send a written notice of the proposed award to the successful bidder and to each unsuccessful bidder.

### **4.3.10 Single bid received**

If only one responsive bid is received in response to an Invitation for Bids, an award may be made to the single bidder, provided the Chief Procurement Officer determines:

- The price submitted is fair and reasonable; and
- Other prospective bidders had a reasonable opportunity to respond or there is not adequate time for a re-solicitation of bids.

**4.3.11 Cancellation of invitation for bids and rejection of bids**

The Executive Director or Chief Procurement Officer may cancel an Invitation for Bids and reject all bids at any time during the procurement process if that officer determines that such action is advantageous to PAG.

If an Invitation for Bids is canceled before bids are due, notice of cancellation shall be sent to all persons to whom the Chief Procurement Officer distributed a solicitation. Any bids received by PAG shall be returned to the bidder. A bidder shall not be entitled to bid preparation costs due to the cancellation.

If an Invitation for Bids is canceled after bids are opened or evaluated, notice of cancellation and rejection of all bids shall be sent to all bidders. All bids shall be retained in the procurement file.

**4.3.12 Multistep sealed bidding**

If it is not practical to initially prepare a definitive purchase description suitable to permit an award based on competitive sealed bidding, the Chief Procurement Officer may use the multistep sealed bidding method. The Invitation for Bids shall describe the steps in the process, including:

- Bidder submission of unpriced technical offers and bid prices in separate envelopes; and
- Evaluation of technical offers, elimination of those bidders whose technical offers are determined to be unacceptable under the criteria set forth in the Invitation for Bids, and award to the responsible bidder submitting the lowest-priced, technically acceptable bid.

**4.4 Formal procurement by competitive sealed proposals (Request for Proposals)**

A typical example of procurement under a “competitive sealed proposal” would be a consultant contract exceeding \$50,000 in cost for professional services, such as planning and research studies, consultants on retainer contract, etc. The contract would normally be awarded to the most qualified vendor with the lowest price proposal (except for architectural and engineering professional services). The technique of competitive proposals is normally conducted with more than one source submitting an offer and either a fixed-price or cost-reimbursement type of contract is awarded.

**4.4.1 Contents of a request for proposals.**

The Chief Procurement Officer, assisted by a Purchasing Agent, shall prepare a draft Request for Proposals (RFP) for procurements conducted through competitive sealed proposals. Upon approval and authorization of the

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Executive Director and Regional Council, the Chief Procurement Officer shall prepare and issue the Request for Proposals in accordance with these guidelines.

The Request for Proposals shall include the following:

1. The title and summary description of the work or materials;
2. A detailed scope of work describing the services required and a description of the work involved, including specific tasks, milestones, and deliverables, or performance specifications for the materials being sought;
3. The manner in which proposals shall be evaluated, including evaluation factors and their relative importance;
4. Notice of the location for delivery and closing date and time for receipt of proposals;
5. The type of contract to be used, if awarded;
6. An estimated duration that the service will be required;
7. Whether cost or pricing data is required;
8. The manner in which information identified as confidential will be handled during the procurement process and notice that all proposals become the property of PAG upon submittal and a matter of public record subsequent to award of a contract, including any confidential information;
9. Notice of the time, date and location for any preproposal conference, if desired by PAG;
10. That discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award;
11. A statement advising that PAG reserves the right to cancel the solicitation in part or in whole at any time, and to reject all bids;
12. A form or other space for the offeror's initial price, and for prices, percentages or rates for any periods of contract extension or renewal;
13. The minimum information that the proposal is required to contain, including the approach that will be used to complete tasks, use of sub-consultants or suppliers, description of the offeror's key personnel, qualifications, related experience, and facilities, and references;

14. A letter of transmittal that shall bear an original signature of the person authorized to sign the proposal on behalf of the offeror;
15. The minimum time period the proposal is to remain valid and irrevocable after the closing date and time for receipt of proposals.
16. Notice of the location, date and time for opening of proposals;
17. Instructions regarding the delivery of the proposal in a sealed envelope with only the words “SEALED PROPOSAL”, proposal title, and date and time of proposal opening clearly written on the envelope;
18. The anticipated contract terms and conditions, including those enumerated in Section 6.2; and
19. The name of the Chief Procurement Officer and Purchasing Agent with instructions regarding inquiries about the Request for Proposals.

#### **4.4.2 Notification of request for proposals**

At a minimum, the Chief Procurement Officer shall advertise the Request for Proposals in a newspaper of general circulation no later than 21 days before the closing date and time for receipt of proposals unless a shorter time is determined to be necessary by the Executive Director.

#### **4.4.3 Amendment of request for proposals**

An amendment to a Request for Proposals shall be used if necessary to:

- Make changes in the Request for Proposals, including changes to the scope of work;
- Correct defects or ambiguities;
- Furnish to other offerors information given to one bidder if the information will assist the other offerors in submitting proposals or if the lack of information will prejudice the other offerors; or
- Inform offerors of acceptable alternate materials.

The Chief Procurement Officer shall specifically identify the amendment as an amendment to the Request for Proposals.

The Chief Procurement Officer shall issue the amendment within a reasonable time before the closing date and time for receipt of proposals to allow prospective offerors time to consider it in preparing their proposals.

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If the original time and date set for the proposal closing does not permit sufficient time for amended proposal preparation, that time and date shall be extended in the amendment and, if necessary, communicated by telegram, facsimile, e-mail or telephone and confirmed in the amendment. The Chief Procurement Officer shall send the amendment to all persons to whom the Request for Proposals was distributed.

If the amendment is issued after the closing date and time for receipt of proposals, the Chief Procurement Officer shall establish a new closing date and time for receipt of proposals that allows prospective offerors sufficient time to modify their proposals. The Chief Procurement Officer shall send the amendment to all offerors that had previously submitted a proposal.

### **4.4.4 Preproposal conference**

Preproposal conferences may be held to discuss the procurement requirements and solicit comments from prospective offerors. Notice shall be given in the Request for Proposals and shall be held not later than ten (10) days before the closing date and time for receipt of proposals unless the Executive Director approves a shorter time. The Chief Procurement Officer, with the assistance of a Purchasing Agent, shall conduct all preproposal conferences. The Chief Procurement Officer shall establish procedures for conducting any preproposal conference as noticed in the Request for Proposals, including submittal of written questions by persons unable to attend, teleconferencing arrangements, and provisions for making available results of questions raised and responses given during the preproposal conference.

### **4.4.5 Modification or withdrawal of proposals before the closing date**

An offeror may modify or withdraw its proposal at any time before the closing date and time for receipt of proposals, provided the Chief Procurement Officer receives the modification or withdrawal request in writing before the closing date and time for receipt of proposals.

Any request to withdraw or modify a proposal received before the closing date and time for receipt of proposals shall be in writing and signed by an authorized agent of the bidder.

All documents concerning a modification or withdrawal of a proposal shall be retained in the appropriate procurement file.

### **4.4.6 Late proposals, modifications or withdrawals**

A proposal, modification or withdrawal received after the closing date and time for receipt of proposals is late

and shall not be considered unless the modification or withdrawal is received before contract award, at the location designated in the Request for Proposals for receipt of proposals, and would have been timely received but for the action or inaction of PAG.

A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals shall be considered if received by the closing date and time set forth in the amendment. A modification of a proposal resulting from discussions shall be considered if received by the closing date and time for submission of best and final offers. If a modifications described in this Section is received after the respective dates and times specified, the modification is late and shall not be considered unless the modification is received before contract award, at the location designated in the Request for Proposals for receipt of proposals, and would have been timely received but for the action or inaction of PAG.

#### **4.4.7 Mistakes in proposals**

Before the time and date set for receipt of proposals, any offeror may withdraw its proposal or correct any mistake by modifying its proposal.

After closing date for receipt of proposals, an offeror may withdraw a proposal or correct a mistake according to Section 4.3.8.

Mistakes shall not be corrected after award of a contract except in accordance with Section 4.3.8.

#### **4.4.8 Receipt, opening and recording of proposals**

Each proposal received shall be date and time-stamped and retained in a secure place by the Chief Procurement Officer until closing date and time for receipt of proposals.

Proposals shall be opened publicly at the location, date and time indicated in the Request for Proposals and the names of the offerors read. No other information shall be publicly disclosed during the procurement process. Proposals and modifications shall be shown only to PAG staff having a legitimate interest in them, or to persons assisting the Chief Procurement Officer and Purchasing Agent in the evaluation of the proposals, who have signed the conflict of interest/nondisclosure statement required by Section 3.3 during the procurement process.

If only one proposal is received in response to a Request for Proposals, the Executive Director may make an award with Regional Council approval, or if time permits and other considerations warrant, resolicit proposals.

#### **4.4.9 Evaluation of proposals**

Proposals shall be evaluated solely on the evaluation factors and their relative importance as set forth in the Request for Proposals.

Upon nomination of a Purchasing Agent, the Chief Procurement Officer may appoint members of an advisory evaluation committee to assist with the evaluation of the proposals. Members of an advisory evaluation committee shall sign the conflict of interest/nondisclosure statement required by Section 3.3.

The Chief Procurement Officer, in coordination with technical staff, shall establish procedures for conducting the evaluation of proposals, including individual reviews by evaluators and joint discussions among evaluators of the proposals' responsiveness to the Request for Proposals, including scoring of evaluation factors, development of consensus and recommendations and contacting references.

If the Chief Procurement Officer decides, upon consultation with the Purchasing Agent, technical staff and any advisory evaluation committee, that further discussions with offerors submitting proposals are appropriate, the Chief Procurement Officer, in coordination with technical staff, shall determine whether each proposal is acceptable for further consideration or not. A determination that a proposal is not acceptable for further consideration shall be in writing, state the basis of the determination and be retained in the procurement file. If the Chief Procurement Officer, in coordination with technical staff, determines that an offeror's proposal is not acceptable for further consideration, that officer shall notify the offeror in writing of the determination.

#### **4.4.10 Discussions with individual offerors**

The Chief Procurement Officer shall establish procedures and schedules for conducting discussions with individual offerors. Disclosure of one offeror's price to another and any information derived from competing proposals is prohibited. The Chief Procurement Officer shall keep a record of all discussions with individual offerors in the procurement file. Discussions with individual offerors shall be conducted by the Chief Procurement Officer, assisted by a Purchasing Agent and technical staff, and may be conducted jointly with an advisory evaluation committee.

#### **4.4.11 Best and final offers**

If discussions are conducted pursuant to Section 4.4.9, the Chief Procurement Officer shall issue a written request for best and final offers after the discussions. The request shall set forth the date, time and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the Executive

Director makes a determination that it is advantageous to PAG's requirements to seek another round of best and final offers. The request for best and final offers shall inform offerors that, if they do not submit a best and final offer, their immediate previous offer will be construed as their best and final offer.

**4.4.12 Recommendation of award of a contract**

The Chief Procurement Officer, Purchasing Agent, technical staff and advisory evaluation committee shall jointly prepare and transmit a written recommendation to the Executive Director regarding award of a contract. The recommendation shall identify the offeror, if any, whose proposal is determined to be the most advantageous to PAG based on the evaluation factors set forth in the Request for Proposals. If the recommendation concludes that none of the proposals are advantageous to PAG, it should identify any appropriate amendments to the Request for Proposal, including the scope of work, or other actions.

The Executive Director shall prepare a recommendation regarding award of contract for consideration by the Regional Council.

**4.4.13 Award of a contract**

A contract, if any, shall be awarded by the Regional Council to the offeror whose proposal is determined to be the most advantageous to PAG based on the evaluation factors set forth in the Request for Proposals. The prices for any contract extension or renewal shall be considered in determining which is the proposal most advantageous to PAG.

The Chief Procurement Officer shall notify each unsuccessful offeror in writing of the award authorized by the Regional Council.

**4.4.14 Execution of contract and notice to proceed**

Upon award of a contract by the Regional Council, the Chief Procurement Officer shall prepare the contract in accordance with the terms and conditions of the award. The contract shall be presented to legal counsel for review and approval as to form. Upon execution of the contract by the Executive Director and the successful offeror, the Chief Procurement Officer shall assign a contract number and issue a written Notice to Proceed.

**4.5 Informal procurement by small purchase procedures**

Typical examples of purchase under a “small purchase procedures would be those relatively simple and informal

procurement methods for securing services, supplies, or other property that cost less than \$50,000.

**4.5.1 Generally**

Procurements made under this Section shall not be artificially divided to avoid the requirements applicable to formal procurements. Additionally, any sole source procurement shall be made according to Section 4.7.3.

**4.5.2 Purchases under \$5,000**

For purchases under \$5,000, the Chief Procurement Officer or a Purchasing Agent shall obtain that level of competition that is appropriate under the circumstances.

**4.5.3 Purchases from \$5,000 to under \$15,000**

For purchases from \$5,000 to under \$15,000, the Chief Procurement Officer or a Purchasing Agent shall, if practicable, solicit written price quotations from three or more vendors. The name of the Purchasing Agent obtaining the quotes and the names of the vendors contacted and their respective quotes shall be documented. The documentation should also include the name of the vendor's employee providing the quote, the date of the call and the vendor's telephone number. Vendors shall be requested to confirm their quotes in writing prior to the issuance of a Purchase Order by the Chief Procurement Officer. The Purchase Order shall be issued to the vendor submitting the most advantageous quote.

The Chief Procurement Officer shall assure that any applicable Federal approval for capital equipment is obtained prior to issuing a purchase order or contract.

**4.5.4 Purchases from \$15,000 to under \$50,000**

For purchases from \$15,000 to under \$50,000, the Chief Procurement Officer or a Purchasing Agent shall, if practicable, obtain written price quotations from three or more qualified vendors. The name of the Purchasing Agent obtaining the quotes and the names of the vendors contacted and their quotes along with each written quote shall be documented. At least one of the three quotes should be solicited from a minority-owned, or woman-owned business. A purchase order or a formal contract, whichever is most appropriate, shall be issued to the vendor submitting the most advantageous quote.

The Chief Procurement Officer shall assure that any applicable Federal approval for capital equipment is obtained prior to issuing a purchase order or contract.

## **4.6 Limited or no competition procurements (using Federal or State contracts)**

### **4.6.1 Purchases from existing contracts**

The Chief Procurement Officer may purchase materials or services from existing contracts of other governmental entities, such as the State of Arizona's contracts, if the entity's procurement process substantially meets the requirements of these guidelines. Where PAG was not originally identified in the contract as a possible purchaser, PAG through the governmental entity shall obtain the approval of the contractor for the purchase. The Chief Procurement Officer may also enter into contracts with vendors who have multiple award schedule contracts with the United States General Services Administration ("GSA") for the same items and prices offered on those federal contracts. Before establishing a contract with the GSA vendor, the Purchasing Agent shall compare that vendor's prices with the prices of the same items on contracts of other public entities and in the local market, and determine that a contract with the GSA vendor offers the best price.

### **4.6.2 Waiver of formal competitive requirements**

Notwithstanding any other provision of these policies, the Executive Director may make a determination that a competitive contract through a formal procurement process, with a formal solicitation and full competition from a wide variety of vendors, is not in PAG's best interests. The determination and the basis for the decision shall be documented in writing and retained in the procurement file.

Circumstances in which this determination may be appropriate include but are not limited to situations in which:

- Sole source procurement as described in Section 4.7 is appropriate;
- The public's health, welfare or safety are or may be affected;
- A grant or gift requires PAG to contract in a particular manner, with a particular entity or for a particular item, or to undertake certain actions within a time frame that does not permit formal competition;
- It is reasonably documented that it is economically infeasible to obtain reasonable competition;
- Compatibility of technology is necessary;
- Standardization is advantageous; or
- The item sought is developmental or sufficiently complex that the number of available competitors is

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limited and the drafting of specifications is impracticable due to nature of the item.

Procurements under this Section shall be conducted with as much competition as is practicable under the circumstances and shall be formalized through a contract or amendment to an existing contract. If formal competition is waived based on the circumstances described in Section 4.6.2, the Executive Director or the Chief Procurement Officer, assisted by a Purchasing Agent, shall prepare a written plan for the procurement, including the factors to be used to evaluate proposals, before receiving proposals.

A waiver of formal procurement process is not appropriate where improper planning has resulted in delays that would make formal competition difficult.

Cost or pricing analysis shall be conducted for procurements effected under this Section.

### **4.7 Procurements by noncompetitive proposals (sole source procurements)**

The Federal government has established uniform standards for the award of contracts on a sole source basis when PAG is expending federal grant funds. The procedures set forth in this Section enumerate those standards and shall be followed for sole source procurements using funds awarded under federal grants.

Sole source procurements using awarded funds under federal grant awards may only be conducted under the following circumstances:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The awarding agency authorizes noncompetitive negotiations;
- After solicitation of a number of sources, competition is determined inadequate; or
- The item is an associated capital maintenance item as defined in 49 U.S.C. §5307 (a) (1) that is procured directly from the original manufacturer or supplier of the item to be replaced. PAG shall first certify to the federal grant awarding agency that:
  - The manufacturer or supplier is the only source for the item; and
  - The price of the item is no higher than the price paid for the item by like customers.

The Chief Procurement Officer shall conduct a cost analysis to verify that the proposed cost is cost effective.

Results of the cost analysis and other supporting documentation shall be placed and maintained in the procurement file.

#### **4.8 Maintenance of a list of prospective bidders and offerors**

The Chief Procurement Officer shall compile and maintain a list of prospective bidders and offerors. Inclusion of the name of a person, company or firm shall not indicate whether or not the bidder or offeror is responsible concerning a particular procurement or otherwise capable of successfully performing a PAG contract, nor does it obligate PAG to notify the person, company or firm of all applicable solicitations.

Persons, companies and firms who fail to respond to a formal solicitation for two consecutive procurements of similar items may be removed by the Chief Procurement Officer from the applicable list of prospective bidders and offerors after mailing a notice to the person, company or firm. Persons, companies and firms may be reinstated upon written request to the Chief Procurement Officer.

#### **4.9 Confidential information**

If a bidder or offeror believes that its bid, proposal or quote contains information that should be withheld from the public as confidential, the bidder or offeror shall include a written statement with its bid or proposal specifically identifying the information that is considered confidential and setting forth the reasons.

The Chief Procurement Officer, Purchasing Agent, or any other PAG employee shall not disclose the information that a bidder or offeror has designated as confidential until the Executive Director makes a written determination concerning the confidentiality request.

The Executive Director shall review the statement and the information, and shall determine whether the information shall be withheld. If the Executive Director determines that the information is not confidential, the Executive Director shall advise the bidder or offeror in writing of the determination.

If the Executive Director determines that the information is confidential, the Executive Director, Chief Procurement Officer, Purchasing Agent, PAG employees, and members of an evaluation committee shall maintain the confidentiality of the information during the procurement process.

Upon award of a contract, if any, by the Regional Council, all bids, proposals and quotes become a matter of public record available for review, including any information previously deemed confidential by the Executive Director.

#### 4.10 Cost or pricing data and analysis

A bidder, offeror or contractor may be required, and shall be required as specified in Section 4.10.2, to submit current cost or pricing data in situations where analysis of a proposed price is essential to determine that a price is reasonable and fair. Examples of situations in which that data may be sought are procurements in which there is limited or no competition or a sole source; contracts in which any costs are reimbursed, such as travel costs; price adjustments for contracts with options to extend; and contract amendments or change orders.

The Federal Office of Management and Budget under the Uniform Administration Requirements for Cooperative Agreements to State and Local Governments (OMB Circular A-102) requires that grantees and subgrantees, when expending federal funds, conduct the following types of analyses in the following situations:

- Preparation of an independent estimate before receiving bids, proposals or quotes;
- A cost analysis when:
  - the offeror is required to submit elements, such as overhead, materials, and labor hours, of estimated cost, under procurements where those elements are considered, such as professional consulting and architectural and engineering services contracts; or
  - adequate price competition is lacking, such as contract modifications and sole source procurements, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public, or on the basis of prices set by law or regulation;
- A price analysis in other instances where analysis of the reasonableness of a proposed price is warranted. Profit shall be negotiated as a separate element of price where there is no price competition and in all cases where cost analysis is performed. Consideration in establishing a fair and reasonable profit shall be given to the complexity of the work to be performed, the risk borne by the contractor, the amount of subcontracting, the quality of its record of past performance and industry profit rates within the metropolitan area.

Costs or prices based on estimated costs shall be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (i.e., OMB Circular A-87).

A bidder, offeror or contractor shall, when requested, submit current cost or pricing data and shall be required to certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete and

current as of a mutually determined date.

#### **4.11 Responsibility of bidders and offerors**

The responsibility of a bidder or offeror shall be determined before awarding any contract.

The Executive Director shall make any determination of non-responsibility in writing setting forth the basis for the determination. The determination shall be retained in the procurement file and a copy of it sent promptly to the bidder or offeror via certified mail. The unreasonable failure of a bidder or offeror to promptly supply information concerning its responsibility shall be grounds for a non-responsibility determination. A finding of non-responsibility shall not be construed as a violation of the rights of any person.

Factors that may be considered in determining responsibility include:

- Financial, physical, personnel or other resources, including subcontractors;
- The record of performance and integrity;
- Whether the proposed contractor is qualified legally to contract with PAG; and
- Whether the proposed contractor supplied all necessary information concerning its responsibility.

#### **4.12 Bid, performance and payment security**

##### **4.12.1 Generally**

The Chief Procurement Officer may seek the submission of security to guarantee faithful bid and contract performance for procurements for materials or services in appropriate circumstances, and shall seek it as required for construction under Arizona Revised Statutes, Title 34, Chapter 2, Public Buildings and Improvements. In determining the amount and type of security required for procurements for materials and supplies, the Chief Procurement Officer, in consultation with the Risk Manager or Insurer, shall consider the nature of the performance, the need for future protection of PAG and the types of security authorized by Arizona Revised Statutes, Title 34, Chapter 2. The requirement for security shall be included in the solicitation.

##### **4.12.2 Bid security**

The Chief Procurement Officer shall determine, on a case-by-case basis, the need for bid security and the amount, except where specifically required by Arizona Revised Statutes, Title 34, Chapter 2, Public Buildings and

Improvements.

Bid security shall be returned to all but the two lowest responsible and responsive bidders within ten (10) days after the opening of bids, and the remaining securities returned within three days after execution of contract.

#### **4.12.3 Performance or payment security**

The Chief Procurement Officer shall determine, on a case-by-case basis, the need for a performance or payment security, and the type and amount, in order to protect the interests of PAG, except where specifically required by Arizona Revised Statutes, Title 34, Chapter 2, Public Buildings and Improvements.

The Chief Procurement Officer may consider additional forms of performance or payment guaranties for materials or services procurements.

#### **4.13 Multi-term contracts**

Unless otherwise provided by law, a contract for materials or services may be entered into for a total period of time of five (5) years if the term of the contract and the conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal year period at the time of contracting. A contract may be entered into for a period of time exceeding five (5) years if the Executive Director determines that a contract of that duration is advantageous to PAG. For contracts awarded expending federal grant funds, the written approval of the federal grant awarding agency is required before PAG may enter into a contract for more than five (5) years.

Multi-term contracts shall contain a provision for termination by PAG in the event funds are not appropriated for continuance of the contract.

#### **4.14 Procurement file**

The Chief Procurement Officer shall maintain a procurement file detailing the history of each formal procurement solicitation. At a minimum, the file shall include:

- The solicitation and any amendments;
- Records of the bid or proposal opening, including bid logs or abstracts;
- Documentation concerning publication of the solicitation, the names of the vendors to which solicitations were sent and those attending any pre-bid or preproposal conference;

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- Documentation concerning any advisory evaluation committee including:
  - The names of the committee members;
  - Each member’s conflict of interest/nondisclosure statement required by Section 3.3;
  - Documentation concerning the committee’s deliberations such as the members’ notes and score sheets about evaluated proposals;
- The bids or proposals submitted, requests for best and final offers, and best and final offers;
- Transmittals of the Chief Procurement, Purchasing Agent, and advisory evaluation committee recommendation for contract award;
- Transmittals of the Executive Director’s recommendation for contract award to the Regional Council;
- Minutes of the Regional Council award of contract;
- Executed contract and amendments, if any; and
- Award notification letters and Notice to Proceed.

## **Section 5 - Development of Specifications and Scopes of Work**

### **5.1 Maximum practicable competition**

All specifications and scopes of work shall seek to promote the best value for PAG concerning the material, service or construction procured; encourage competition; and not be unduly restrictive.

### **5.2 Brand name or equal specification**

A brand name or equal specification shall be used only if the Chief Procurement Officer determines that its use is advantageous to PAG.

A solicitation containing a brand name or equal specification shall provide for the submission of substantially equivalent materials and shall explain that the use of the specification is for the purpose of describing the standard of quality, performance, and characteristics desired.

A brand name or equal specification shall designate as many different brands as practicable as “or equal” references. The specification shall also include a description or list of the specific design, functional or performance characteristics of the brand name material that are sought in the material being procured, unless the Chief Procurement Officer determines that the essential characteristics of the brand names designated are commonly known.

### **5.3 Specifications, plans or scopes of work prepared by non-PAG employees**

PAG may contract for the preparation of specifications, plans and drawings or scopes of work with persons other than PAG employees. Contracts for such services shall provide that the specifications, plans and drawings, or scopes of work prepared by the contractor shall comply with the provisions of this Section.

## **Section 6 - Contract Types and Forms; Terms and Conditions; Administration**

### **6.1 Contract types and forms**

PAG may use any type of contract that is appropriate under the circumstances except that it shall not use cost-plus-a-percentage-of-cost contracts. Contracts shall be in a form and contain terms and conditions approved by the Executive Director and PAG's legal counsel.

### **6.2 Contract terms and conditions**

Contracts that PAG enters into should include clauses authorizing the following terms and conditions, unless deemed unnecessary or inappropriate by the Executive Director and legal counsel:

1. Scope of work, including tasks, performance schedule, deliverables, and contract period;
2. Cancellation of the contract for a conflict of interest under Arizona Revised Statutes §38-511;
3. Termination of the contract for cause or for the convenience of PAG, including the manner by which it will be effected and the basis for settlement;
4. Termination of the contract for contractor default (bankruptcy judgement, persistent or repeated refusal or failure to perform in accordance with contract requirements, abandonment of work or unnecessary or unreasonable delays, or refusal to correct deficient work);
5. Termination of the contract due to unavailability of funds;
6. Administrative, contractual or legal remedies in instances where a contractor violates or breaches contract terms, including appropriate sanctions and penalties;
7. Notice of awarding agency requirements and regulations pertaining to reporting;
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention, which arises or is developed in the course of or under such contract;
9. Notice of awarding agency requirements and regulations pertaining to copyrights and other rights accruing exclusively to PAG for possession, use or release of data, information, computer programs, reports and other deliverables;

## Section 6 – Contract Types and Forms; Terms and Conditions; Administration

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10. Presentation of certificates of insurance for specified minimum limits of liability insurance coverage in force throughout the duration of the contract, including workman's compensation, professional liability (errors and omissions), and general liability insurance.
11. Compliance with safety requirements of the Occupational Safety and Health Act (29 U.S.C. Section 651-678) as promulgated by the federal government and implemented by the State of Arizona;
12. Provisions for the contractor's internal control over all financial transactions related to the contract;
13. Notice that provisions relating to arbitration or requiring arbitration shall not apply to PAG except by PAG's express written consent given subsequent to execution of the contract;
14. Clear understanding that each party will act in its individual capacity and not as agent, employee, partner, joint venture, or associate of the other and no employee or agent of one party shall be deemed or construed to be an employee or agent of the other party for any reason whatsoever;
15. Understanding and agreement that contract is for the sole convenience of PAG and is non-exclusive;
16. Commencement of work shall not start until after receiving a written Notice to Proceed from the Executive Director or Chief Procurement Officer;
17. Establishment and maintenance of procedures and controls to assure no unauthorized disclosure by the agents, officers or employees of the contractor of information contained in its records or obtained from others in performing the scope of work;
18. Certification that submission of the proposal did not involve collusion or anti-competitive practices or any offer, or future offer, of any gift or other gratuity;
19. Provisions for amending the contract;
20. Method and schedule of payments for services or materials rendered, including retention of payments pending satisfactory completion of the scope of work;
21. Provisions regarding any delegation of any duty, right or interest assigned to the contractor to another party;
22. Non-waiver of existing or future rights and remedies available to either party by law in the event of a claim of default or breach of contract;

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23. Provisions for filing, hearing, deciding and remedying a protest in connection with the Request for Proposal or proposed contract award, such provisions being in accordance with PAG's procurement guidelines for protest procedures;
24. Provisions for warranting that all materials delivered and services rendered conform to contract specifications;
25. Provisions subjecting all materials, services and other deliverables to the acceptance by PAG as satisfactory and procedures for return or remediation of materials, services and other deliverables deemed not to conform with contract specifications or are substantially deficient;
26. Provision that title and risk of loss of materials or services shall not pass to PAG until actual receipt of the materials or services at the point of delivery.
27. Provision that the delivery of non-conforming materials or services in one task, deliverable, or installment shall constitute total breach of the contract;
28. Provisions that all materials, services and other deliverables shall be free from all liens unless otherwise provided;
29. Provisions that the contractor shall maintain in current standing all necessary Federal, state and local business licenses;
30. Provisions for indemnifying, defending and holding PAG harmless from any and all claims, demands, suits, actions, proceedings, loss costs, and damages arising from acts of the contractor in connection with or incidental to the performance of contract work, other than any liability to the extent caused by the negligence of PAG or its employees;
31. Provisions for determining the extent of either party's liability due to prevention of performance due to an occurrence that is beyond the control of the party affected and occurs without its fault or negligence (Force Majeure);
32. Provisions for right of assurance by one party when in good faith it has reason to question the other party's intent to perform and recourse when written assurance is not given in a timely manner;
33. Provisions for restricting advertising or publishing information concerning the contract without prior written consent of PAG;

## Section 6 – Contract Types and Forms; Terms and Conditions; Administration

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34. Compliance with the requirements of PAG’s Disadvantaged Business Enterprise (DBE) and Affirmative Action programs;
35. Compliance with the all applicable provisions of the Americans with Disabilities Act and applicable federal regulations under this Act;
36. Notice of federal awarding agency requirements for access by PAG, the Arizona Department of Transportation, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
37. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed; and
38. Other provisions required by law.

The following must be considered for all construction and repair contracts that PAG enters into and shall include a clause authorizing the following:

- Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity”, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).
- Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair).
- Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation).
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

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- Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

Every contract that PAG enters into that equals or exceeds \$50,000 shall include the terms and conditions identified in Section 6.2.1 as well as additional terms and conditions authorizing at a minimum the following:

- The right of PAG to inspect at a reasonable time the contractor's and its subcontractors' places of business; and
- The right of PAG to audit at reasonable times and places the books and records of any person submitting cost or pricing data, or the books and records of a contractor, relating to the performance of the contract for a period of three (3) years after the final payment under the contract.

### **6.3 Prohibition against advance payments**

Payment to a contractor in advance of the contractor incurring costs for work performed is prohibited unless the Executive Director makes a determination before the payment is made that an advance payment is in PAG's best interest. A copy of the determination shall be retained in the procurement file. For contracts expending federal funds, written approval for advance payments shall also be obtained from the federal grant awarding agency before the payment can be made. The Executive Director may make a blanket determination that certain advance payments, such as those for subscriptions, memberships or conference registrations, are permissible.

### **6.4 Contract amendments**

A contract shall be modified solely through a written amendment or change order to the contract signed by the Executive Director or Chief Procurement Officer, as appropriate, before the work that is the subject of the amendment or change order is performed. PAG shall not pay for work performed by a contractor directed by an unauthorized PAG employee or without a written amendment or change order signed by the Executive Director.

## **Section 7 - Protest Procedures**

### **7.1 Filing a protest**

An aggrieved person may protest a solicitation or a proposed contract award.

### **7.2 Time of filing**

A protest alleging defects or ambiguities in the solicitation shall be filed no later than three (3) days before the date set for bid opening or closing date for receipt of proposals. All other protests shall be filed within five (5) days after the protestor knew or should have known the basis for the protest and, where applicable, before the Regional Council makes an award decision. In procurements funded using federal grant award funding, the Regional Council shall not make an award for five (5) days following issuance of a decision or dispositive order on the protest, other than permitted under Section 7.7.2. Awards of contracts shall be final and no protest may be filed after award.

### **7.3 Contents of a protest**

A protest shall be in writing and shall:

- State the name and address of the aggrieved person;
- Identify the contracting activity and the name of the solicitation;
- Contain a statement of the grounds of the protest;
- Include supporting exhibits, evidence or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

### **7.4 Place of filing a protest**

A protest shall be filed within applicable time limits at the following address:

Executive Director  
Pima Association of Governments  
177 N. Church Ave., Suite 405  
Tucson, AZ 85701

## **7.5 Hearings**

If the Executive Director determines that a hearing is appropriate, the Executive Director shall notify the protestor of the time and place set for a hearing on the protest. The hearing shall be informal. The Executive Director may also give notice of the hearing to any other persons involved in the solicitation whose interests may be affected by the ruling requested from the Executive Director. Any person whose interest is affected shall be permitted to intervene and participate in such hearing.

The Executive Director shall dismiss a protest, upon a written determination, before scheduling a hearing, if:

- The protest does not state a valid basis for protest; or
- The protest is untimely pursuant to these guidelines.

If a protestor fails to appear and participate in the hearing, the Executive Director may summarily rule upon the protest based upon information then available.

## **7.6 Decision**

The Executive Director shall issue a written ruling within a reasonable time after conclusion of the hearing. The ruling shall be final.

## **7.7 Remedies**

### **7.7.1 Generally**

If the Executive Director sustains the protest in whole or part and determines that a solicitation or proposed contract award does not comply with the applicable procurement statutes, grant requirements or these guidelines, the Executive Director shall implement an appropriate remedy. In determining an appropriate remedy, the Executive Director shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, costs to PAG, the urgency of the procurement and the impact of the relief.

### **7.7.2 Possible remedies**

An appropriate remedy may include one or more of the following:

- Reissuance of the solicitation;
- Issuance of a new solicitation;
- Award of a contract consistent with applicable procurement statutes, grant requirements or these guidelines; or
- Such other relief as is determined necessary to ensure compliance with applicable procurement statutes, grant requirements or guidelines.

## **7.8 Protests to the Federal grant awarding agencies**

### **7.8.1 Generally**

Under certain limited circumstances, an interested party may protest to the applicable federal grant awarding agency the award of a contract funded under a federal grant. The federal grant awarding agency's review of any protest shall be limited to the alleged failure of PAG to maintain written protest procedures or its alleged failure to follow those procedures.

### **7.8.2 Time for filing**

Protesters shall file a protest with the federal grant awarding agency not later than five (5) days after a final decision is rendered under PAG's protest procedure. In instances where the protestor alleges that the Executive Director failed to make a final determination on the protest, the protestor shall file a protest with the federal grant awarding agency not later than five (5) days after the protestor knew or should have known of PAG's failure to render a final determination on the protest.

A contract shall not be awarded for five (5) days following the Executive Director's decision on a procurement protest unless the Executive Director makes a determination concerning one of the following:

- The items to be procured are urgently needed;
- Delivery or performance will be unreasonably delayed by the failure to make an award promptly; or
- The failure to make an award will otherwise cause undue harm to PAG or to the federal government.

If award is made, the Executive Director's determination shall be documented in writing and retained in the procurement file and prompt written notification given to the protestor and, as appropriate, to other interested

parties of the determination to proceed with an award.

**7.8.3 Submission of protest to a federal grant awarding agency**

Protests should be filed with the appropriate regional office of the federal grant awarding agency (i.e., FHWA, FTA, FAA, HHS, EPA, etc.) and with a concurrent copy to PAG, according to the applicable federal guidelines.

The protest should include at a minimum the following:

- The name and address of the protestor;
- The name of PAG, the project number or name, and the number of the solicitation;
- A statement of the grounds for the protest and any supporting documentation; and
- A copy of the local protest filed with PAG and a copy of PAG's decision, if any.

## **Section 8 - Contract Claims or Controversies**

### **8.1 Filing contract claims or controversies**

A contractor shall file a claim or controversy under a contract with the Executive Director within a reasonable time after the claim or controversy arises but in no event later than 180 days after the cause of action accrues. The claim or controversy shall be in writing and identified as a claim or controversy. The claim shall specify in detail the factual and legal basis for it, identify the contract number, state the specific relief sought including where applicable the dollar amount of any claim, and request a final decision.

### **8.2 Decision**

If a claim or controversy cannot be resolved by mutual agreement, the Executive Director may initiate alternative dispute resolution procedures. If the claim or controversy is not resolved by mutual agreement or otherwise, the Executive Director shall issue a final written decision. The final decision shall include:

- A description of the controversy;
- A reference to the pertinent contract provisions;
- A statement of the factual areas of agreement or disagreement; and
- A statement of the decision, with supporting rationale.

Final decisions shall be made within 30 days of the date that the Executive Director determined that a mutual agreement could not be reached. The Executive Director may extend the time limit for good cause for a reasonable time not to exceed an additional 30 days. If extended, the Executive Director shall notify the contractor in writing that the time has been extended and the date by which a decision shall be issued.

### **8.3 Notice of decision**

The final decision shall be furnished to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

## Section 9 - Suspension and Debarment

### 9.1 Generally

The Executive Director may suspend or debar a person, partnership or corporation under the provisions of this Section. Suspension of any person, partnership or corporation shall not exceed one year. A debarment shall be from three years to an indefinite period of time, based on cause and the number of times the person, partnership or corporation has been previously debarred.

### 9.2 Causes

The causes for debarment or suspension may include, but are not limited to, the following:

- Conviction of any person or subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- Conviction of any person or any subsidiary or affiliate of any person under any statute of the Federal Government, this State or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offenses indicating a lack of business integrity or business honesty which affects responsibility as an PAG contractor.
- Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.
- Violations of contract provisions or a charter which are deemed to be so serious as to justify debarment action, such as either of the following:
  - Knowingly failing without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - Failure to perform or unsatisfactory performance in accordance with the terms of a contract, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

## Section 9 – Suspension and Debarment

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- Any other cause deemed to affect responsibility as a PAG contractor, including financial instability, failure to pay subcontractors or suppliers, failure to pay subcontractors or suppliers as required under the provisions of the PAG Disadvantaged Business Enterprise (DBE) Program, suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity for any cause listed in established rules.

### **9.3 Notice**

Before imposing a suspension or debarment, the Executive Director shall give the affected party written notice of the grounds for suspension or debarment and shall afford such person an opportunity for a hearing.

## **Section 10 - Disposal of Surplus Property**

### **10.1 Responsibility**

The Chief Procurement Officer shall be responsible for disposing of PAG surplus property.

### **10.2 Disposal methods**

The Chief Procurement Officer must convey used property or surplus supplies as outlined in the Federal Office of Management and Budget under the *Uniform Administration Requirements for Cooperative Agreements to State and Local Governments* OMB Circular A-102 (“the Common Rule”) Section 2541.320 Paragraphs (e) (1) to (3); Paragraphs (f) (1) to (3); and Paragraphs (g) (1) to (3); and Section 2541.330 Paragraph (b).