



PROCUREMENT AND GRANTS POLICY OF THE ARIZONA COMMERCE AUTHORITY

I. Purpose.

This Arizona Commerce Authority (“**ACA**”) Procurement and Grants Policy (the “**Policy**”) sets forth the goals and parameters of ACA when procuring products and/or services and when administering grants. The primary purposes of the Policy are to:

- A. Ensure public confidence and transparency;
- B. Provide fair and equitable treatment of all persons engaged in the procurement and grants processes; and
- C. Foster competition while providing flexibility to achieve ACA’s statutory mandates.

II. Applicability.

A. Subject to sections II(B) and (C), below, this Policy applies to the expenditure of all funds by ACA.

- B. Expenditures for the following items are exempt from this Policy;
 - 1. Legal services;
 - 2. Risk management services and insurance;
 - 3. Intergovernmental agreements and intergovernmental service agreements;
 - 4. Memberships in or sponsorships of trade organizations;
 - 5. Trade show registrations, participation, sponsorships, or promotional support;
 - 6. ACA staff travel and entertainment expenses (see Arizona Commerce Authority Travel and Entertainment Policy);
 - 7. International offices, including contract staff and providers of professional services, in accordance with the Foreign Corrupt Practices Act of 1977;
 - 8. Sector strategy advisors to the ACA Chief Executive Officer.

C. For any grant, tax incentive, loan or other financial assistance program administered by ACA which has its own solicitation and award guidelines, whether created by

ACA or some other funding or responsible entity, those guidelines and not this Policy shall apply.

III. Definitions.

A. The following definitions apply throughout this Policy:¹

1. “Board” means the Board of Directors of ACA.
2. “Contract” means all types of agreements, regardless of what they may be denominated, for the procurement of products and/or services or the awarding of grants.
3. “Contract Amendment” means any binding alteration of a contract.
4. “Contractor” means any person having a contract with ACA.
5. “Days” means calendar days unless otherwise specified.
6. “Chief Administrative Officer” or “CAO” means the Chief Administrative Officer of ACA.
7. “Chief Executive Officer” or “CEO” means the Chief Executive Officer of ACA.
8. “Chief Financial Officer” or “CFO” means the Chief Financial Officer of ACA.
9. “Chief Operating Officer” or “COO” means the Chief Operating Officer of ACA.
10. “Grant” means the furnishing by ACA of financial or other assistance, whether including state funds or federal grant funds, to any person pursuant to any program authorized by law.
11. “IFB” means an Invitation for Bid. IFBs are all documents, whether attached or incorporated by reference, which are used to solicit bids from possible providers of a material or service.
12. “Products” means personal property, including but not limited to equipment, supplies, printing, and insurance.
13. “Person” means any business, individual, committee, other organization or group of individuals.
14. “Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any products or services. It also includes all functions that pertain to the obtaining of any material or service, including but not limited to description of requirements, selection and

solicitation or sources, preparation and award of a contract, and all phases of contract administration.

15. “Public Notice” means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include electronic mailing lists and posting on a designated web site(s).

16. “RFGA” means a Request for Grant Application. RFGA’s are all documents, whether attached or incorporated by reference, which are used to request grant applications from potential grantees.

17. “RFP” means a Request for Proposals. RFPs are all documents, whether attached or incorporated by reference, which are used to request proposals from potential providers of material or services.

IV. General Provisions.

A. Authority.

1. The CEO is ultimately responsible for ACA’s adherence to this Policy and any related laws, rules and regulations. The CEO’s authority may be delegated in writing. The CEO has concurrent authority for all actions and approvals assigned to other ACA officers and employees in this Policy.

2. The COO has specific authority as set forth herein which may be delegated in writing from time to time as circumstances dictate.

3. ACA may amend this Policy by an action of its Board of Directors.

4. The CEO may adopt more specific procurement and grant-related procedures consistent with this Policy.

B. Standards of Conduct.

ACA’s Conflict of Interest, Ethics and Gifts policies apply to all procurement and grant-related activities.

C. Records Retention.²

In order to foster transparency and consistency, for all procurements and grant awards, ACA shall maintain records, in accordance with Arizona law, sufficient to document the significant history of the procurement or grant award. Such records shall include, but are not limited to the following, as applicable:

1. The rationale for the particular procurement method selected;
2. The rationale for the particular contract type selected;

² Analogous to A.R.S. § 41-2515 and § 41-2551.

3. All documents relating to the selection of the vendor, supplier, or contractor;
4. The rationale for how price was determined to be fair and reasonable;
5. All communication between ACA and the contractor;
6. Original contract; and
7. Contract amendments.

D. Contract Administration.

ACA shall monitor and review each contract to determine whether contract terms and conditions, including deliverables, are being met and shall endeavor to resolve any problems concerning adherence to terms and conditions of the contract. Key contract performance issues may include but are not limited to: performance, delivery dates quality assurance issues, and breach of contract terms and conditions. The CEO may request members of the Board of Directors and others committed to ACA's purpose to serve on an advisory group with respect to procurements, grants, or any other matter under the CEO's authority.³

E. Receiving Goods

The CFO shall adopt and implement procedures to control the review and documentation of goods received.

V. Approval of Procurements.

1. Procurements that exceed Five Hundred Thousand Dollars (\$500,000.00) (five percent [5%] of the Arizona Commerce Authority Fund) and were not reflected in a Board-approved budget must be approved by the Board.
2. Procurements between Twenty Five Thousand Dollars (\$25,000.00) and Five Hundred Thousand Dollars (\$500,000.00) must be approved in writing by the requesting employee's department head and COO.
3. Procurements up to Twenty Five Thousand Dollars (\$25,000.00) must be approved in writing by the requesting employee's department head and COO, CFO or CAO.
4. Approval for amendments to procurement contracts is the same as for other procurements, except that the amount of each amendment for purposes of the approval thresholds above is deemed to be the cumulative amount of all amendments to the subject contract to date. An example is illustrated in the table below.

³ Derived from A.R.S. § 41-2516.

Description	Approval	Amount
Original Contract Award	Board	\$500,000
Contract Amendment 1	CEO/COO	\$250,000
Contract Amendment 2	CEO/COO	\$150,000
Contract Amendment 3*	Board	\$100,000

* Requires Board approval as amendments cumulatively exceed \$500,000.

VI. Purchasing Card Program.

The CFO shall develop and implement a purchasing card (P-Card) program, subject to the approval of the COO, under which certain ACA employees, at the COO's discretion, are issued P Cards for procurement purposes. The P Card program shall be documented in writing and made available in conjunction with this Policy. The P Card program shall make clear that P Cards are to be used approved procurements, only, and that misuse of P Cards is grounds for disciplinary action, including up to termination.

VII. Competition for Procurements.

A. Informal Procurements.

1. Micro Purchases. Procurements not exceeding Five Thousand Dollars (\$5,000.00) may be made in the ACA's reasonable judgment.

2. Other Non-Competitive Procurements. Sole source procurements,⁴ emergency procurements,⁵ procurement through State of Arizona contracts and other procurements in which a competitive process is impracticable⁶ and/or would not serve the best interests of ACA, as determined by the Board of Directors (for purchases over Five Hundred Thousand Dollars [\$500,000.00]) or by the COO (for purchases of Five Hundred Thousand Dollars [\$500,000.00] or less), may be made without obtaining quotes, bids or proposals. In those instances, documentation of the reasons that competition is impracticable and/or would not further the interests of ACA and why the price paid is considered reasonable shall be made in the procurement file, except that procurements made under State of Arizona contracts section do not require such documentation.

3. Informal Bids and Proposals. Procurements for products and services expected to cost between Five Thousand Dollars and One Cent (\$5,000.01) and Fifty Thousand Dollars (\$50,000.00) may be made informally, without a formal IFB or public notice, by obtaining at least three price quotes, which may be obtained through non-publicly advertised requests for quotations, bids or proposals submitted directly to vendors and/or through reviewing publicly advertised prices.

⁴ A.R.S. § 41-2536.

⁵ A.R.S. § 41-2537.

⁶ *Id.*

B. Formal Procurements.⁷

1. Invitation for Bids (IFBs) and Request for Proposals (RFPs). Procurements for products and services expected to cost over Fifty Thousand Dollars (\$50,000.00) shall be made by preparing and advertising formal IFB or RFP documents, whichever is appropriate, and the award shall be made based on criteria established by ACA. RFPs shall contain language that the award of the contract is based on the evaluation that produces the “best value” for ACA. ACA may negotiate or may award the contract without negotiations.

2. Requirements for IFBs and RFPs. IFBs and RFPs shall be advertised for a minimum of two (2) weeks on the ACA website and/or a local newspaper of general circulation, and shall be sent to a list of vendors registered with the State of Arizona for notice of such solicitations.

C. Contract Amendments. Any contract change order causing an increase in the contract amount by more than \$10,000 may be executed only if the COO determines in writing that the change order or amendment is advantageous to the state and the price is determined to be fair and reasonable.

D. Vendor Selection. Awards shall be made on the basis of the price quoted, quality and availability of the product and considering, in an order to be determined based on the nature of each procurement, the following factors relating to the contractor, in no particular order: (i) the contractor’s ability to successfully perform under the terms of the proposed procurement; (ii) the contractor’s experience and history of service to ACA; (iii) the integrity of the contractor; (iv) the contractor’s compliance with public policy; (v) the contractor’s past performance; and (vi) the contractor’s financial and technical resources.

E. ACA shall not arbitrarily split contracts or procurements so as to avoid the applicability of this policy.

VIII. Protests and Contract Claims.

A. ACA shall develop rules for processing procurement related protests and contract claims which are similar to the corresponding State of Arizona rules.

IX. Grants.

A. For each grant administered by ACA, ACA shall prepare a grant administration program that is consistent with this Section IX.

B. Each grant program shall include the following elements:

1. Process for establishing terms and conditions of the grant;
2. Requirements for advertising the grant opportunity;

⁷ A.R.S. § 41-2533; A.R.S. § 41-2534.

3. Process and criteria for evaluating grant applications and awarding grants. Such process shall include, at a minimum, procedures that are substantially similar to the requirements set forth in A.R.S. § 41-2602(B) through (J).

4. Process for ensuring grantee compliance with grant requirements; and

5. Process for measuring grant outcomes.

C. Public advertising for grants shall be through an RFGA which shall contain language that the award(s) of the grant(s) is based on the evaluation that produces the “best value” for ACA. RFGAs shall be advertised for a minimum of two weeks on the ACA website and/or a local newspaper of general circulation.

D. For good cause, the COO of ACA may waive compliance with any particular requirements set forth in this Section IX if the CEO determines that such compliance is impracticable, unnecessary, or contrary to the public interest, but such grant solicitation and award shall be made with competition that is practicable under the circumstances.⁸ All waivers granted by the COO shall be retained in the public records of ACA.⁹

⁸ Derived from A.R.S. § 41-2703.

⁹ A.R.S. § 41-2703 (C).

CERTIFICATE OF ADOPTION

The undersigned Co-Chairperson of the Authority does hereby certify that the Board of Directors of the Arizona Commerce Authority adopted the foregoing Procurement and Grants Policy pursuant to a motion of the Board of Directors dated the 18th day of May, 2012.

By: _____

Name: Jerry Colangelo

Title: Co-Chairperson

RECEIPT AND ACKNOWLEDGMENT

By signing below, I acknowledge and understand the following:

- I have received, read, and understand this Arizona Commerce Authority (ACA) Procurement and Grants Policy (the “Policy”) approved by the ACA Board of Directors on 9-27-11.
- I agree to abide by the Policy as a condition of my employment and my continuing employment at the ACA.
- I understand that if I have any questions regarding this Policy at any time in the future, I will ask my supervisor or management for an explanation.

Name

Position

Date