

Chapter 28

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT PROCUREMENT CODE

- Art. I. In General, §§ 28-1--28-10
- Art. II. Procurement Chair and Treasurer of the Board, §§ 28-11--28-14
- Art. III. Source Selection and Contract Formation, §§ 28-15--28-40
- Art. IV. Specifications, §§ 28-41--28-46
- Art. V. Procurement of Professional Design Services and Capital Improvements, §§ 28-47--28-57
- Art. VI. Contract Terms and Conditions, §§ 28-58--28-61
- Art. VII. Cost Principles, §§ 28-62--28-65
- Art. VIII. Materials Management, §§ 28-66--28-74
- Art. IX. Legal and Contractual Remedies, §§ 28-75--28-125
- Art. X. Cooperative Purchasing, §§ 28-126--28-131
- Art. XI. Reserved, §§ 28-132--28-159

Article I. General Provisions

- Sec. 28-1. Applicability.
- Sec. 28-2. Definitions.
- Sec. 28-3. Supplementary general principles of law applicable.
- Sec. 28-4. Requirement of good faith.
- Sec. 28-5. Confidential information.
- Secs. 28-6--28-10. Reserved.

Article II. Procurement Chair and Treasurer of the Board

- Sec. 28-11. Authority of the Chair and Treasurer of the Board.
- Sec. 28-12. Written determinations.
- Secs. 28-13, 28-14. Reserved.

Article III. Source Selection and Contract Formation

- Sec. 28-15. Definitions.
- Sec. 28-16. Methods of source selection.
- Sec. 28-17. Competitive sealed bidding.
- Sec. 28-18. Competitive sealed proposals.
- Sec. 28-19. Contracting for legal counsel.
- Sec. 28-20. Contracts for materials and services.
- Sec. 28-21. Sole source procurement.
- Sec. 28-22. Emergency procurements.
- Sec. 28-23. [Deleted by Resolution No. 1-13].
- Sec. 28-24. [Deleted by Resolution No. 1-13].
- Sec. 28-25. Cancellation of solicitations.
- Sec. 28-26. Rejection of individual bids, proposals, quotations or statements of qualifications.
- Sec. 28-27. Responsibility of bidders, offerors and respondents.
- Sec. 28-28. Bid and contract security, material or service contracts.
- Sec. 28-29. Types of contracts.
- Sec. 28-30. Approval of accounting system.
- Sec. 28-31. Multi-year contracts.
- Sec. 28-32. Right to inspect.
- Sec. 28-33. Right to audit records.
- Sec. 28-34. Reporting of anticompetitive practices.
- Sec. 28-35. Prospective vendors lists.
- Sec. 28-36. Contract form and execution.

- Sec. 28-37. Assignment of rights and duties.
- Sec. 28-38. Efficient resource procurement and utilization.
- Sec. 28-39. [Deleted by Resolution No. 1-13].
- Sec. 28-40. Reserved.

Article IV. Specifications

- Sec. 28-41. Definition.
- Sec. 28-42. Maximum practicable competition.
- Sec. 28-43. Specifications prepared by other than district personnel.
- Sec. 28-44. Brand name or equal specification.
- Sec. 28-45. [Deleted by Resolution No. 1-13].
- Sec. 28-46. Reserved.

Article V. Procurement of Professional Design Services and Capital Improvements

- Sec. 28-47. Definitions.
- Sec. 28-48. Procurement of construction.
- Sec. 28-49. Procurement of professional design services.
- Sec. 28-50. Procurement of construction services.
- Sec. 28-51. [Deleted by Resolution No. 1-13].
- Sec. 28-52--28-57. Reserved.

Article VI. Contract Terms and Conditions

- Sec. 28-58. Contract terms and conditions.
- Secs. 28-59--28-61. Reserved.

Article VII. Cost Principles

- Sec. 28-62. Cost principles.
- Sec. 28-63. Cost or pricing data.
- Secs. 28-64, 28-65. Reserved.

Article VIII. Materials Management

- Sec. 28-66. [Deleted by Resolution No. 1-13].
- Sec. 28-67. [Deleted by Resolution No. 1-13].
- Sec. 28-68. [Deleted by Resolution No. 1-13].
- Sec. 28-69. [Deleted by Resolution No. 1-13].
- Sec. 28-70. [Deleted by Resolution No. 1-13].

- Sec. 28-71. [Deleted by Resolution No. 1-13].
- Sec. 28-72. [Deleted by Resolution No. 1-13].
- Sec. 28-73. [Deleted by Resolution No. 1-13].
- Sec. 28-74. [Deleted by Resolution No. 1-13].

Article IX. Legal and Contractual Remedies

- Sec. 28-75. Definitions.
- Sec. 28-76. Authority of the contract officer.
- Sec. 28-77. Right to protest.
- Sec. 28-78. Filing of a protest.
- Sec. 28-79. Time for filing protests.
- Sec. 28-80. Stay of procurements during the protest.
- Sec. 28-81. Confidential information.
- Sec. 28-82. Decision by the contract officer.
- Sec. 28-83. Remedies.
- Sec. 28-84. Appeals to the Chair and Treasurer of the Board.
- Sec. 28-85. Notice of appeal.
- Sec. 28-86. Stay of procurement during appeal.
- Sec. 28-87. Contract officer report.
- Sec. 28-88. Dismissal before hearing.
- Sec. 28-89. Hearing.
- Sec. 28-90. Remedies.
- Sec. 28-91. [Deleted by Resolution No. 1-13].
- Sec. 28-92. [Deleted by Resolution No. 1-13].
- Sec. 28-93. [Deleted by Resolution No. 1-13].
- Sec. 28-94. [Deleted by Resolution No. 1-13].
- Sec. 28-95. [Deleted by Resolution No. 1-13].
- Sec. 28-96. [Deleted by Resolution No. 1-13].
- Sec. 28-97. [Deleted by Resolution No. 1-13].
- Sec. 28-98. [Deleted by Resolution No. 1-13].
- Sec. 28-99. Authority to debar or suspend.
- Sec. 28-100. Debarment or suspension causes.
- Sec. 28-101. Matters not proper for debarment or suspension.
- Sec. 28-102. Initiation of debarment.
- Sec. 28-103. Period of debarment.
- Sec. 28-104. Notice.
- Sec. 28-105. Notice to affiliates.

- Sec. 28-106. Imputed knowledge.
- Sec. 28-107. Suspension.
- Sec. 28-108. Period and scope of suspension.
- Sec. 28-109. Suspension notice, hearing, determination and appeal.
- Sec. 28-110. Reinstatement.
- Sec. 28-111. Limited participation.
- Sec. 28-112. Master list for suspension and debarment.
- Sec. 28-113. Hearing procedures.
- Sec. 28-114. Recommendation by the hearing officer.
- Sec. 28-115. Final decision by the Chair and Treasurer of the Board.
- Sec. 28-116. Rehearing of Chair and Treasurer of the Board's decision.
- Sec. 28-117. Judicial review of protests, claims, debarments or suspensions.
- Sec. 28-118. Exclusive remedy.
- Secs. 28-119--28-125. Reserved.

Article X. Cooperative Purchasing

- Sec. 28-126. Definitions.
- Sec. 28-127. Applicability.
- Sec. 28-128. Cooperative purchasing agreements required.
- Sec. 28-129. Cooperative purchasing authorized.
- Secs. 28-130, 28-131. Reserved.

Article XI. Reserved

- Secs. 28-132--28-159. Reserved.

ARTICLE I.
GENERAL PROVISIONS

Sec. 28-1 Applicability.

Sec. 28-1(1). The provisions of this chapter shall apply to the following:

- (a) Every expenditure of public monies by this district irrespective of their source, including federal assistance monies;
- (b) Disposal of property; and
- (c) Contracts where there is no expenditure of public monies or where the district is offering something of value to the business community when the district determines source selection and award of a contract.

Sec. 28-1(2). The following are exempt from the provisions of this chapter:

- (a) Grants awarded by the district and approved by Board.
- (b) The sale or lease of district real property.
- (c) Contracts for professional witnesses if the purpose of such contracts is to provide for services or testimony relating to an existing or probable judicial proceeding in which this district is or may become a party or to contracts for special investigative services for law enforcement purposes.
- (d) Agreements negotiated by the district attorney in settlement of litigation or threatened litigation.
- (e) The purchases of materials for resale in a concession operation which shall be made in accordance with procedures prescribed by the Chair and Treasurer of the Board.
- (f) [Deleted by Resolution No. 1-13]

Sec. 28-2. Definitions.

In this chapter, unless the context otherwise requires:

Sec. 28-2(1). "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Sec. 28-2(2). "Change order" means a written document authorized by the Chair and Treasurer of the Board which directs the contractor to make changes with or without the consent of the contractor.

Sec. 28-2(3). "District" means an Arizona tax levying public improvement district now existing and known as the Rio Nuevo Multipurpose Facilities District.

Sec. 28-2(4). "Construction" means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings or real property.

Sec. 28-2(5). "Construction services" means either of the following for construction-manager-at risk, design-build and job-order-contracting project delivery methods:

(a) Construction, excluding services through the construction-manager-at-risk or job-order-contracting project delivery methods.

(b) A combination of construction and, as elected by the District, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in section 28-47.

Sec. 28-2(6). "Contract" means all types of District agreements, regardless of what they may be called, for the procurement of materials, services, or construction or the disposal of materials.

Sec. 28-2(7). "Contract amendment" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties of the contract.

Sec. 28-2(8). "Contract officer" means any person duly authorized by the Chair and Treasurer of the Board to facilitate the source selection process, including but not limited to, preparing solicitations and written determinations, conducting negotiations, making award recommendations, and administering contracts.

Sec. 28-2(9). "Contractor" means any person who has a contract with the District.

Sec. 28-2(10). "Days", unless otherwise specified, means calendar days and shall be computed pursuant to A.R.S. section 1-243.

Sec. 28-2(11). "District" means the Rio Nuevo Multipurpose Facilities District.

Sec. 28-2(12). "Designee" means a duly authorized representative of the Chair and Treasurer of the Board, designated by the Chair and Treasurer of the Board.

Sec. 28-2(13). "Chair and Treasurer of the Board" means the Chair and Treasurer of the District.

Sec. 28-2(14). "Disposal of material" means sale of surplus, unclaimed and seized property by public auction, competitive sealed bidding, small purchase procedures or other appropriate method designated by this chapter.

Sec. 28.2(15). "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Sec. 28-2(16). "Grant" means the furnishing by this District of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of materials, services or construction. A contract resulting from such an agreement is not a grant but a procurement contract.

Sec. 28-2(17). "Materials" means all property, including but not limited to, equipment, supplies, printing, insurance and buildings but does not include land, a permanent interest in land or leases of real property.

Sec. 28-2(18). "Person" means any corporation, consultant, business, individual, union, committee, club, other organization or group of individuals.

Sec. 28-2(19). "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the acquisition of any material, service or construction, including description of requirements, selection and solicitation of sources, preparation, negotiation and award of contract, and all phases of contract administration.

Sec. 28-2(20). "Public notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods may include electronic mailing lists and a website maintained for that purpose.

Sec. 28-2(21). "Services" means the furnishing of labor, time or effort by a contractor, consultant, subcontractor or subconsultant which does not involve the delivery of a specific end product other than required design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of services includes, but is not limited to, consulting, personal, professional, legal counsel, auditing, technical, professional design and construction services.

Sec. 28-2(22). "Subcontractor or subconsultant" means a person who contracts to perform work or render service to a contractor or consultant as defined by this section or to another subcontractor or subconsultant as a part of a contract with the District.

Sec. 28-2(23). "Written or in writing" means the product of any method for forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Sec. 28-2(24). [Deleted by Resolution No. 1-13].

Sec. 28-2(25). "*Professional Services*" means those services requiring specialized knowledge, education, skill or expertise and where the qualifications of the person(s) rendering the services are of primary importance Professional services shall include, but not be limited to, services provided by architects, attorneys, accountants, construction and project managers, design professionals, engineers, geologists, real estate agents, marketing, and lobbyist including any other such services defined as professional under state law.

Sec. 28-3. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this chapter.

Sec. 28-4. Requirement of good faith.

This chapter requires all parties involved in the negotiation, performance, or administration of District contracts to act in good faith.

Sec. 28-5. Confidential Information.

Confidential information shall be designated as follows:

Sec. 28-5(1). If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld from public record, a statement advising the contract officer of this fact should accompany the submission and the information shall be so identified wherever it appears.

Sec. 28-5(2). The information identified by the person as confidential may not be disclosed until the Chair and Treasurer of the Board makes a written determination.

Sec. 28-5(3). The Chair and Treasurer of the Board shall review the statement and information and may determine in writing that the information shall be withheld or disclosed.

Sec. 28-5(4). If the Chair and Treasurer of the Board determines to disclose the information, the Chair and Treasurer of the Board shall inform the person in writing of such determination.

Secs. 28-6—28-10. Reserved.

ARTICLE II.

PROCUREMENT CHAIR AND TREASURER OF THE BOARD

Sec. 28-11. Authority of the Chair and Treasurer of the Board.

Sec. 28-11(1). Except as otherwise provided in this chapter, the Chair and Treasurer of the Board may adopt operational procedures, consistent with this chapter, governing the procurement and management of all materials, services and construction to be procured by this District and the disposal of materials.

Sec. 28-11(2). The Chair and Treasurer of the Board shall serve as the central procurement and contracting authority of this District.

Sec. 28-11(3). Except as otherwise provided in this chapter, the Chair and Treasurer of the Board shall:

- (a) Procure or supervise the procurement of all materials, service and construction needed by this District.
- (b) Establish guidelines for the management of all inventories of materials belonging to this District.
- (c) Sell, trade or otherwise dispose of surplus materials belonging to this District.
- (d) Prepare, issue, revise, maintain, and monitor the use of specifications for materials, services and construction required by this District.
- (e) [Deleted by Resolution No. 1-13].
- (f) [Deleted by Resolution No. 1-13].
- (g) [Deleted by Resolution No. 1-13].

Sec. 28-11(4). [Deleted by Resolution No. 1-13].

Sec. 28-11(5). The Chair and Treasurer of the Board may determine in writing that noncompliance with any provision of this chapter is nonsubstantial and may allow for correction or may waive minor informalities or irregularities. The basis for the decision shall be included in the determination.

Sec. 28-12. Written determinations.

Written determinations required by this chapter shall be retained in the District.

Secs. 28-13, 28-14. Reserved.

ARTICLE III.

SOURCE SELECTION AND CONTRACT FORMATION

Sec. 28-15. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-15(1). "Best value" means a technique in the competitive sealed bid process which permits the evaluation of objective criteria to determine the best overall value to the District.

Sec. 28-15(2). "Discussions" means communication with an offeror, bidder or respondent for the purpose of:

- (a) Eliminating minor irregularities, informalities, or apparent clerical mistakes in the offer or response.
- (b) Clarifying any offer or response to assure full understanding of, and responsiveness to, solicitation requirements.
- (c) Resolving minor variations in contract terms and conditions.
- (d) Establishing the competency or financial stability of any offeror, bidder or respondent.

Sec. 28-15(3). "Invitation for bid" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in section 28-17.

Sec. 28-15(4). [Deleted by Resolution No. 1-13].

Sec. 28-15(5). "Minor informality" means mistakes, or non-judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of such mistakes does not prejudice other bidders, offerors or respondents.

Sec. 28-15(6). "Negotiations" means an exchange of information or any form of cooperation during which the offeror and the District may alter or otherwise change the conditions, terms, and price, unless prohibited, of the proposed contract.

Sec. 28-15(7). "Proposal revision" means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contract officer, as the result of negotiation.

Sec. 28-15(8). "Request for proposals" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in section 28-18.

Sec. 28-15(9). "Request for qualifications" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting responses from qualified respondents in accordance with article V.

Sec. 28-15(10). "Responsible bidder, offeror, or respondent" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

Sec. 28-15(11). "Responsive bidder" means a person who submits a bid which conforms in all material respects to the invitation for bids.

Sec. 28-15(12). [Deleted by Resolution No. 1-13].

Sec. 28-15(13). "Solicitation" means an invitation for bids, a request for technical proposals, a request for proposals, a request for qualifications, a request for quotations, an invitation for bids or any other invitation or request by which the District invites a person to participate in a procurement.

Sec. 28-16. Methods of source selection.

All contracts of the District shall be awarded by one of the methods of source selection specified in this chapter.

Sec. 28-17. Competitive sealed bidding.

Sec. 28-17(1). Invitation for bids.

(a) Competitive sealed bids shall be solicited through an invitation for bids. The invitation for bids shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.

(b) [Deleted by Resolution No. 1-13].

Sec. 28-17(2). Public notice. Notice of the invitation for bids shall be electronically posted and the invitation for bids shall be available for public inspection not less than fourteen (14) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Chair and Treasurer of the Board. The public notice shall state the place, date, and time of bid opening.

Sec. 28-17(3). Late bids. A bid is late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. The District's clock is the governing clock. A late bid shall be rejected. A late bid shall not be opened except for, if necessary, identification purposes. Such bids may be returned to the bidder. Bidders submitting bids that are rejected as late shall be so notified.

Sec. 28-17(4). Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder and the amount of each bid, as well as other relevant information as the Chair and Treasurer of the Board deems appropriate shall be recorded. Unless otherwise determined by the Chair and Treasurer of the Board, this record shall be open to public inspection. In the event no attendees are present for bid opening, the sealed bids shall be opened by the District and a "bid" or "no

bid" may be recorded on the tabulation sheet. The bid may then be given to the appropriate person for recording. The attendance sheets will indicate that there were no attendees present. Unless otherwise determined by the Chair and Treasurer of the Board, the bids shall not be opened for public inspection until after a contract is awarded. After a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with section 28-5.

Sec. 28-17(5). Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.

Sec. 28-17(6). Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the District prior to the time set for bid opening.

Mistakes discovered after bid opening may be modified or withdrawn only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other bid provisions prejudicial to the interest of the District or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a mistake may be permitted to withdraw its bid if:

(a) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident.

(b) The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Chair and Treasurer of the Board.

Sec. 28-17(7). Contract award.

(a) General. The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.

(b) [Deleted by Resolution No. 1-13].

(c) [Deleted by Resolution No. 1-13].

(d) Consideration of taxes in competitive sealed bidding. In evaluating the bids, except for procurement of construction, and for purposes of determining the low bidder, the determination of low bidder shall include the amount of applicable business privilege tax.

(e) [Deleted by Resolution No. 1-13].

(f) Public record. After the District issues a notice of intent to award, or in the absence of a notice of intent to award upon final contract execution, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with section 28-5 (confidential information).

Sec. 28-17(8). Low tie bids. If there are two (2) or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by random selection in a manner prescribed by the Chair and Treasurer of the Board.

Sec. 28-18. Competitive sealed proposals.

Sec. 28-18(1). Request for proposals.

(a) Competitive sealed proposals shall be solicited through a request for proposals. The request for proposals shall include a scope of work and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.

(b) [Deleted by Resolution No. 1-13].

Sec. 28-18(2). Public notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in section 28-17(2) (competitive sealed bidding, public notice).

Sec. 28-18(3). Late proposals. A proposal is late if it is received at the location designated in the request for proposals after the time and date set for receipt of proposals. Late proposals shall be rejected in accordance with section 28-17(3).

Sec. 28-18(4). Receipt of proposals. Proposals shall not be opened publicly. No proposals shall be handled as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be open for public inspection after a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with section 28-5 (confidential information).

Sec. 28-18(5). Evaluation of proposals.

(a) Evaluation criteria. The request for proposals shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. Specific numerical weighting is not required.

(b) Selection committee. The Chair and Treasurer of the Board shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

Sec. 28-18(6). Discussion with offerors. Discussions may be conducted with offerors.

Sec. 28-18(7). Negotiations with offerors and revisions to proposals. Negotiations may be conducted with offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(a) Concurrent negotiations. Negotiations may be conducted concurrently with offerors for the purpose of determining source selection and/or contract award.

(b) Exclusive negotiations. Exclusive negotiations may be conducted with the offeror whose proposal is determined in the source selection process to be most advantageous to the District. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the District may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.

Sec. 28-18(8). Contract award. Contract award shall be made by the Chair and Treasurer of the Board to the responsible offeror whose proposal is determined in writing to be the most advantageous to the District taking into consideration the evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

Sec. 28-19. Contracting for legal counsel.

Sec. 28-19(1). Authority. For the purpose of procuring the services of legal counsel, as defined by the laws of the state, contracts for the services of legal counsel shall be awarded with the authorization of the District attorney except as otherwise provided by law.

Sec. 28-19(2). Conditions for use. Unless determined by the District attorney that direct selection is in the best interest of the District, the services of legal counsel shall be procured in accordance with this chapter.

Sec. 28-20. Contracts for materials and services.

Sec. 28-20(1). General. All contracts between the District and a vender or contractor shall be subject to approval by a vote of the majority of the Board of Directors, unless otherwise specified herein.

Sec. 28-20(2). Small Contracts. Any contract not exceeding Twenty Five Thousand Dollars (\$25,000.00) may be approved and signed on behalf of the District by the Chair and Treasurer. Contract requirements shall not be artificially divided so as to constitute a small contract under this section. No less than three (3) businesses shall be solicited to submit quotations under this contracting authority. The Treasurer or his/her designee shall report to the District Board during each regular board meeting on any expenditure made under this subsection.

Section 28-20(3). Professional Services. Except as is required under this Code and Title 34 of the Arizona Revised Statutes, the District shall procure professional services via requests for qualifications, however, the District may procure professional services by direct selection if determined by the Chair, Treasurer and Secretary to be advantageous to the District. All professional service contracts, regardless of dollar amount, shall be presented to the Board for review and approval pursuant to Section 28-20(1).

Sec. 28-20(4). Project Process and Approval Matrix. For any project related to an infrastructure facility to be built or renovated by the District, the District Board of Directors may approve an approval process and procedures matrix that will provide the authority and procedures for the contract approval, processing and management of the project. In the event of a conflict between a matrix and this procurement code, this code shall control.

Sec. 28-20(5). Petty Cash Disbursements. Subject to applicable provisions of this Code, the Chair, and Treasurer, jointly, are authorized to approve the expenditure of District funds up to a maximum of Five Thousand Dollars (\$5,000) for the acquisition of goods and services on behalf of the District. The Treasurer or his/her designee shall report to the District Board during each regular Board meeting on any expenditure made under this subsection.

Sec. 28-21. Sole source procurement.

Notwithstanding any other provisions of this chapter, a contract may be awarded without competition when the Chair and Treasurer of the Board determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service, or construction item. The using agency requesting a sole source procurement shall provide written evidence to support a sole source determination. The Chair and Treasurer of the Board may require that negotiations are conducted as to price, delivery, and terms. The Chair and Treasurer of the Board may require the submission of cost or pricing data in connection with an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.

Sec. 28-22. Emergency procurements.

Notwithstanding any other provisions of this chapter, the Chair and Treasurer of the Board may make or authorize others to make emergency procurements of materials, services, or construction when there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with sections 28-17 (competitive sealed bidding), 28-18 (competitive sealed proposals), 28-49 (procurement of professional design services), or 28-50 (procurement of construction services) contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. The using agency requesting an emergency procurement shall provide written evidence to support an emergency determination. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need. A written determination of the basis for the emergency and for the selection of the particular contractor shall be maintained as a public record.

Sec. 28-23. [Deleted by Resolution No. 1-13].

Sec. 28-24. [Deleted by Resolution No. 1-13].

Sec. 28-25. Cancellation of solicitations.

Sec. 28-25(1). Cancellation of solicitations. An invitation for bids, a request for proposals, a request for qualifications, or other solicitation may be cancelled, or any or all bids, proposals or statements of qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the District.

Sec. 28-25(2). Prior to opening.

(a) As used in this section, "opening" means the date and time set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals means the date and time set for the auction close.

(b) Prior to opening, a solicitation may be cancelled in whole or in part when the Chair and Treasurer of the Board determines in writing that such action is in the District's best interest for reasons including but not limited to:

(i) The District no longer requires the materials, services, or construction;

(ii) [Deleted by Resolution No. 1-13];

(iii) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is in the best interest of the District.

(c) When a solicitation is cancelled prior to opening, notice of cancellation shall be publicly posted.

(d) The notice of cancellation shall:

(i) Identify the solicitation;

(ii) Briefly explain the reason for cancellation; and

(iii) Where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar materials, services, or construction.

Sec. 28-25(3). After opening.

(a) After opening but prior to award, all bids, proposals or statements of qualifications may be rejected in whole or in part when the Chair and Treasurer of the Board determines in writing that such action is in the District's best interest for reasons including but not limited to:

(i) The District no longer requires the materials, services or construction;

(ii) Ambiguous or otherwise inadequate specifications or scopes of work were part of the solicitation;

(iii) The solicitation did not provide for consideration of all factors of significance to the District;

(iv) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(v) All otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices;

(vi) There is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or

(vii) Competition was insufficient.

(b) A notice of rejection shall be sent to all persons that submitted bids, statements of qualifications or proposals, and it shall conform to subsection 28-25(2)(d) of this section.

(c) If all bids, proposals or request for qualifications are rejected, all bids, proposals or statements received shall remain, to the extent possible, confidential.

Sec. 28-25(4). Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 28-26. Rejection of individual bids, proposals, quotations or statements of qualifications.

(a) A bid may be rejected if:

(i) The bidder is determined to be nonresponsible pursuant to section 28-27 (Responsibility of bidders and offerors);

(ii) The bid is nonresponsive in accordance with section 28-17 (competitive sealed bidding); or

(iii) It is otherwise not advantageous to the District.

(b) A proposal, statement of qualifications or quotation may be rejected if:

(i) The person responding to the solicitation is determined to be nonresponsible pursuant to Section 28-27 (responsibility of bidders, offerors and respondents); or

(ii) [Deleted by Resolution 1-13].

(iii) The proposed price exceeds available funds or is unreasonable; or

(iv) It is otherwise not advantageous to the District.

(c) The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 28-27. Responsibility of bidders, offerors and respondents.

Sec. 28-27(1). Findings of nonresponsibility. If a bidder, offeror or respondent who otherwise would have been awarded a contract is found nonresponsible, a written finding of nonresponsibility, setting forth the basis of the finding, shall be prepared by the contract officer. The unreasonable failure of a bidder, offeror or respondent to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of nonresponsibility with respect to such bidder or offeror. The written finding shall be made part of the contract file and be made a public record.

Sec. 28-27(2). Right of nondisclosure. Confidential information furnished by a bidder, offeror or respondent pursuant to this section shall not be disclosed by the District outside of the District, or using agency, without prior written consent by the bidder, offeror or respondent.

Sec. 28-27(3). [Factors.] Factors to be considered in determining if a prospective contractor is responsible include:

- (a) The proposed contractor's financial, physical, personnel or other resources, including subcontracts;
- (b) The proposed contractor's record of performance and integrity;
- (c) Whether the proposed contractor is qualified legally to contract with the District; and
- (d) Whether the proposed contractor supplied all necessary information concerning its responsibility.

Sec. 28-27(4). [Responsibility criteria.] The contract officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

Sec. 28-28. Bid and contract security, material or service contracts.

The Chair and Treasurer of the Board may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the Chair and Treasurer of the Board shall consider the nature of the performance and the need for future protection to the District. The requirement for security must be included in the invitation for bids, or request for proposals. Failure to submit security in the amount and type of security required may result in the rejection of the bid or proposal.

Sec. 28-29. Types of contracts.

Subject to the limitations of this chapter, any type of contract which will promote the best interests of this District may be used.

Sec. 28-30. Approval of accounting system.

The Chair and Treasurer of the Board may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract.

Sec. 28-31 Multi-year contracts.

Unless otherwise provided by law, a contract for materials, services or construction may be entered into for any period of time deemed to be in the best interest of this District, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

Sec. 28-32. Right to inspect.

The District may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or subconsultant that is related to the performance of any contract awarded or to be awarded by this District.

Sec. 28-33. Right to audit records.

Sec. 28-33(1). The District may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in article VII of this chapter to the extent that the books and records relate to the cost or pricing data. Any person who is awarded a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless otherwise specified in the contract.

Sec. 28-33(2). The District is entitled to audit the books and records of a contractor, consultant or any subcontractor or subconsultant under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contractor or consultant, and by the subcontractor or subconsultant for a period of three (3) years from the date of final payment under the subcontract, unless otherwise specified in the contract.

Sec. 28-34. Reporting of anticompetitive practices.

If for any reason collusion or other anticompetitive practices are suspected among any bidders, offerors or respondents a notice of the relevant facts shall be transmitted to the Chair and Treasurer of the Board and the District attorney. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the Chair and Treasurer of the Board.

Sec. 28-35. Prospective vendors lists.

Sec. 28-35(1). The Chair and Treasurer of the Board shall maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a District contract.

Sec. 28-35(2). Persons desiring to be included on the prospective vendors list may notify the Chair and Treasurer of the Board or may register with the District electronically. The District may remove a person from the prospective vendors list if it is determined that inclusion is not advantageous to the District.

Sec. 28-35(3). It shall be the vendor's sole responsibility to ensure that vendor registration information is current and active.

Sec. 28-36. Contract form and execution.

All contracts entered into under this chapter shall be executed in the name of the District by the Chair and Treasurer of the Board and approved as to form by the District attorney. Such contracts are not required to be countersigned by the District clerk.

Sec. 28-37. Assignment of rights and duties.

The rights and duties of a District contract are not transferable or otherwise assignable without the written consent of the Chair and Treasurer of the Board.

Sec. 28-38. Efficient resource procurement and utilization.

All printed material produced by a contractor in the performance of a contract shall, whenever practicable, be printed on recycled paper, labeled as printed on recycled paper, and duplexed.

Sec. 28-39. [Deleted by Resolution No. 1-13].

Sec. 28-40. Reserved.

ARTICLE IV.

SPECIFICATIONS

Sec. 28-41. Definition.

As used in this article, "specification" is used interchangeably with "scope", "scope of services", or "scope of work" and means any description of the 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.

Sec. 28-42. Maximum practicable competition.

Sec. 28-42(1). All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the District's needs and shall not be unduly restrictive.

Sec. 28-42(2). To the extent practicable and unless otherwise permitted by this chapter, all specifications shall describe the District's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.

Sec. 28-42(3). Restrictive specifications shall not be used unless such specifications are required and it is not practicable or advantageous to use a less restrictive specification. The using agency requesting a restrictive specification shall provide written evidence to support the restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of restrictive specifications.

Sec. 28-42(4). To the extent practicable, the District shall use accepted commercial specifications and shall procure standard commercial materials.

Sec. 28-43. Specifications prepared by other than District personnel.

The requirements of this chapter regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications prepared other than by District personnel, including, but not limited to, those prepared by architects, engineers, designers, and consultants for public contracts, or subcontractors. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

Sec. 28-44. Brand name or equal specification.

A brand name or equal specification may be used to describe the standards of quality, performance, and other characteristics needed to meet the requirements of a solicitation, and which invites offers for equivalent products from a manufacturer.

Sec. 28-45. [Deleted by Resolution No. 1-13]

Sec. 28-46. Reserved.

ARTICLE V.

PROCUREMENT OF PROFESSIONAL DESIGN SERVICES AND CAPITAL IMPROVEMENTS

Sec. 28-47. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-47(1). "Capital improvement" means an outlay of funds for the acquisition or improvement of real property, which extends the life or increases the productivity of the real property.

Sec. 28-47(2). "Construction" means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of existing public infrastructures or facilities, including structures, buildings or real property.

Sec. 28-47(3). "Construction-manager-at-risk" means a project delivery method in which:

- (a) There is a separate contract for design services and a separate contract for construction services.
- (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
- (c) Design and construction of the project may be in sequential phases or concurrent phases.
- (d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 28-47(4). "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

- (a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
- (b) A combination of construction and, as elected by the District, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.

Sec. 28-47(5). "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

Sec. 28-47(6). "Design-bid-build" means a project delivery method in which:

- (a) There is a sequential award of two (2) separate contracts.
- (b) The first contract is for design services.
- (c) The second contract is for construction.
- (d) Design and construction of the project are in sequential phases.
- (e) Finance services, maintenance services and operations services are not included.

Sec. 28-47(7). "Design-build" means a project delivery method in which:

- (a) There is a single contract for design services and construction services.
- (b) Design and construction of the project may be in sequential phases or concurrent phases.
- (c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 28-47(8). "Finance services" means financing for a construction services project.

Sec. 28-47(9). [Deleted by Resolution No. 1-13].

Sec. 28-47(10). "Infrastructure facility" means a building; structure; or network of buildings, structures, pipes, controls, and equipment making up a "multipurpose facility" as defined by Arizona Revised Statutes Section 48-4201.

Sec. 28-47(11). "Job-order-contracting" means a project delivery method in which:

- (a) The contract is a requirements contract for indefinite quantities of construction.
- (b) The construction to be performed is specified in job orders issued during the contract.
- (c) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.
- (d) The project limit shall be set by the Chair and Treasurer of the Board in accordance with A.R.S. title 34.

Sec. 28-47(12). "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Sec. 28-47(13). "Operations services" means routine operation of existing facilities, structures, buildings or real property.

Sec. 28-47(14). "Preconstruction services" means advice during the design phase.

Sec. 28-47(15). "Professional design services" means architect services, assayer services, engineering services, geologist services, landscape architect services, and land surveying service or any combination of those services that are legally required to be accomplished, reviewed, and approved by professionals registered to practice in the pertaining discipline in the State of Arizona.

Sec. 28-48 Procurement of construction.

Sec. 28-48(1). Contracts for construction shall be solicited through a competitive sealed bid process except as otherwise provided for in 28-50 (procurement of construction services), 28-20 (small purchases), 28-21 (sole source procurement), 28-22 (emergency procurements) and 28-23 (special procurements). The Chair and Treasurer of the Board shall award and administer contracts for construction in accordance with the requirements of A.R.S. title 34 and the District Procurement Code.

Sec. 28-48(2). Bidders shall submit subcontractor lists for all first tier subcontracts that are above five thousand dollars (\$5,000.00). Bids not in compliance with this requirement shall be deemed non-responsive. Submission of the subcontractor list shall act as bidder certification that the work shall be performed by either the bidder or the listed subcontractors. Substitutions may be allowed at the discretion of the Chair and Treasurer of the Board, for reasons including but not limited to, subcontractor non-responsiveness, insolvency, or any other reason deemed by the Chair and Treasurer of the Board to be in the best interest of the District.

Sec. 28-48(3). [Deleted by Resolution No. 1-13].

Sec. 28-49 Procurement of professional design services.

Contracts for professional design services shall be solicited through a request for qualifications except as otherwise provided for in 28-20 (small purchases), 28-21 (sole source procurement), and 28-22 (emergency procurements). The Chair and Treasurer of the Board shall award and administer contracts for professional design services in accordance with the requirements of A.R.S. title 34 and the District Procurement Code.

Sec. 28-50. Procurement of construction services.

Contracts for construction services shall be solicited through a design-build, construction-manager- at-risk or job-order-contracting selection process utilizing a request for qualifications except as otherwise provided for in [sections] 28-20 (small purchases), 28-21 (sole source procurement), and 28-22 (emergency procurements). The Chair and Treasurer of the Board shall award and administer contracts for construction services in accordance with the requirements of A.R.S. title 34 and the District Procurement Code.

Sec. 28-51. [Deleted by Resolution No. 1-13].

Sec. 28-52. Procurement of construction services.

The alternative systems and procedures authorized under Arizona Revised Statutes Section 48-4204(E) are incorporated herein, and may be utilized by the District for any project authorized therein.

Sec. 28-53--28-57. Reserved.

ARTICLE VI.

CONTRACT TERMS AND CONDITIONS

Sec 28-58. Contract terms and conditions.

All District contracts shall include provisions necessary to define the responsibilities and rights of the parties to the contract.

Secs. 28-59—28-61. Reserved.

ARTICLE VII.

COST PRINCIPLES

Sec. 28-62. Cost principles.

The Chair and Treasurer of the Board shall establish cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

Sec. 28-63. Cost or pricing data.

The submission of current cost or pricing data may be required in connection with any award, change order or contract modification.

Secs. 28-64, 28-65. Reserved.

ARTICLE VIII.

MATERIALS MANAGEMENT

Secs. 28-66--28-74. [Deleted by Resolution No. 1-13].

ARTICLE IX.

LEGAL AND CONTRACTUAL REMEDIES

Sec. 28-75. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-75(1). "Adequate evidence" means more than mere accusation but less than substantial evidence. Consideration shall be given to the amount of credible information available, reasonableness in view of surrounding circumstances, corroboration, and other inferences that may be drawn from the existence or absence of affirmative facts.

Sec. 28-75(2). "Affiliate" means any person whose governing instruments requires it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidary relationship between persons.

Sec. 28-75(3). "Debarment" means an action taken by the Chair and Treasurer of the Board under this article to prohibit a person from participating in District procurements.

Sec. 28-75(4). "Filed" means delivery to the contract officer or to the Chair and Treasurer of the Board, whichever is applicable. A time and date of receipt shall be documented in a verifiable manner for purposes of filing.

Sec. 28-75(5). "Governing instruments" means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

Sec. 28-75(6). "Interested party" means an actual or prospective bidder, respondent or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an economic interest exists will depend upon the circumstances of each case. An interested party does not include a supplier, subconsultant or subcontractor to an actual or prospective bidder, respondent or offeror.

Sec. 28-75(7). "Receipt" means the earlier of actual receipt or the first attempted delivery by certified mail, or by any other means that provides evidence of the attempt, to the persons' last known address.

Sec. 28-75(8). "Substantial evidence" means such relevant evidence as a reasonable person might accept as sufficient to support a particular conclusion.

Sec. 28-75(9). "Suspension" means an action taken by the Chair and Treasurer of the Board under this article temporarily disqualifying a person from participating in District procurements.

Sec. 28-76. Authority of the contract officer.

The contract officer shall have the authority to settle and resolve protests and contract claims. Appeals from the decisions of the contract officer may be made to the Chair and Treasurer of the Board pursuant to the provisions of this article.

Sec. 28-77. Right to protest.

Any actual interested party who is aggrieved in connection with the solicitation or award of a contract may protest to the contract officer.

Sec. 28-78. Filing of a protest.

Content of protest. The protest shall be in writing and shall include the following information:

- (a) The name, address, telephone number and email address of the protestant.
- (b) The signature of the protestant or its representative.
- (c) Identification of the solicitation or contract number.
- (d) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents.
- (e) The form of relief requested.

Sec. 28-79. Time for filing protests.

Sec. 28-79(1). Protests concerning improprieties in a solicitation. Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five (5) working days before the solicitation due date.

Sec. 28-79(2). In cases other than those covered in subsection (1) of this section, protests shall be filed within ten (10) days after the aggrieved person knows or should have known of the facts giving rise thereto; however, in no event shall the protest be filed later than ten (10) days after issuance of notification of award.

Sec. 28-79(3). The contract officer, without waiving the District's right to dismiss the protest for lack of timeliness, may consider any protest that is not filed timely.

Sec. 28-79(4). The contract officer shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right to intervene.

Sec. 28-80. Stay of procurements during the protest.

In the event of a timely protest under section 28-79, the District may proceed further with the solicitation or with the award of the contract unless the Chair and Treasurer of the Board makes a written determination that there is a reasonable probability that the protest will be sustained or that the stay of procurement is not contrary to the substantial interests of the District.

Sec. 28-81. Confidential information.

Sec. 28-81(1). Material submitted by a protestant shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law or as determined pursuant to section 28-5.

Sec. 28-81(2). If the protestant believes the protest contains material that should be withheld, a statement advising the contract officer of this fact shall accompany the protest submission in accordance with section 28-5.

Sec. 28-82. Decision by the contract officer.

Sec. 28-82(1). The contract officer shall issue a written decision within fourteen (14) days after a protest has been filed pursuant to section 28-78. The decision shall contain an explanation of the basis of the decision.

Sec. 28-82(2). The contract officer shall furnish a copy of the decision to the protestant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

Sec. 28-82(3). The time limit for decisions set forth in subsection (1) of this section may be extended by the Chair and Treasurer of the Board for a reasonable time not to exceed thirty (30) days. The contract officer shall notify the protestant in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

Sec. 28-82(4). If the contract officer fails to issue a decision within the time limits set forth in subsection (1) or (3) of this section, the protestant may proceed as if the contract officer had issued an adverse decision.

Sec. 28-82(5). The contract officer's decision shall contain a statement regarding the appeals process that is available pursuant to this article.

Sec. 28-83. Remedies.

Sec. 28-83(1). If the contract officer sustains the protest in whole or part and determines that a solicitation, evaluation process, proposed contract award, or contract award does not comply with the procurement code, the officer shall implement an appropriate remedy.

Sec. 28-83(2). In determining an appropriate remedy, the contract officer shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to:

- (a) The seriousness of the procurement deficiency.
- (b) The degree of prejudice to other interested parties or to the integrity of the procurement process.
- (c) The good faith of the parties.
- (d) The extent of performance.
- (e) Costs to the District.
- (f) The urgency of the procurement.
- (g) The impact of the relief on the using agency's mission.

Sec. 28-83(3). An appropriate remedy may include one or more of the following:

- (a) Reject all bids, responses or proposals.
- (b) Terminate the contract.
- (c) Reissue the solicitation.
- (d) Issue a new solicitation.
- (e) Award a contract consistent with the procurement code.
- (f) Such other relief as is determined necessary to ensure compliance with the Charter and this chapter.

Sec. 28-84. Appeals to the Chair and Treasurer of the Board.

Sec. 28-84(1). [Appeal.] An appeal from a decision entered or deemed to be entered by the contract officer shall be filed with the Chair and Treasurer of the Board within seven (7) days from the date the decision is issued. The appellant shall also file a copy of the appeal with the contract officer.

Sec. 28-84(2). Content of appeal. The appeal shall contain:

- (a) The information set forth in section 28-78, including the identification of confidential information in the manner set forth in section 28-81.
- (b) A copy of the decision of the contract officer.
- (c) The precise factual or legal error in the decision of the contract officer from which an appeal is taken.

Sec. 28-85. Notice of appeal.

Sec. 28-85(1). The Chair and Treasurer of the Board shall give notice of the appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Such interested parties shall have the right to request copies of the appeal and to intervene in the proceedings.

Sec. 28-85(2). The Chair and Treasurer of the Board shall, upon request, furnish copies of the appeal to those named in subsection (1) of this section subject to the provisions of section 28-81.

Sec. 28-86. Stay of procurement during appeal.

If an appeal is filed during the procurement and before an award of a contract and the procurement or award of the contract was stayed by the Chair and Treasurer of the Board pursuant to section 28-80, the filing of an appeal shall automatically continue the stay unless the Chair and Treasurer of the Board makes a written determination that the procurement or award of the contract without delay is necessary to protect substantial interests of the District.

Sec. 28-87. Contract officer report.

Sec. 28-87(1). [Report.] The contract officer shall file a report on the appeal with the Chair and Treasurer of the Board within seven (7) days from the date the appeal is filed. At the same time, the contract officer shall furnish a copy of the report to the appellant by certified mail, return receipt requested or any other method that provides evidence of receipt, and to any interested parties who have responded to the notice given pursuant to section 28-85(2). The report shall contain copies of:

- (a) The appeal.
- (b) Any other documents that are relevant to the protest.
- (c) A statement by the contract officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

Sec. 28-87(2). Extension for filing of report.

(a) The contract officer may request in writing an extension of the time period setting forth the reason for extension.

(b) The Chair and Treasurer of the Board's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the report. The Chair and Treasurer of the Board shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

Sec. 28-87(3). Comments on report.

(a) The appellant shall file comments on the contract officer's report with the Chair and Treasurer of the Board within seven (7) days after receipt of the report. Copies of the comments shall be provided by the appellant to the contract officer and all other interested parties. The comments must contain a statement or confirmation as to the appellant's requested form of relief.

(b) The Chair and Treasurer of the Board may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth in subsection (3)(a) of this section stating the reason an extension is necessary. The Chair and Treasurer of the Board's determination on the request shall be in writing, state the reasons for the determination and, if the extension is granted, set forth a new date for the filing of comments. The Chair and Treasurer of the Board shall notify the contract officer of any extension.

Sec. 28-88. Dismissal before hearing.

The Chair and Treasurer of the Board shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

Sec. 28-88(1). The appeal does not state a valid basis, including a detailed statement of the legal and factual grounds, for protest; or

Sec. 28-88(2). The appeal is untimely pursuant to section 28-84(1).

Sec. 28-89. Hearing.

Hearings on appeals of protest decisions shall be conducted in accordance with section 28-113.

Sec. 28-90. Remedies.

If the Chair and Treasurer of the Board sustains the appeal in whole or part and determines that a solicitation, evaluation process, proposed award, or award does not comply with the Charter and/or this chapter, remedies may be implemented pursuant to section 28-83.

Secs. 28-91--28-98. [Deleted by Resolution No. 1-13].

Sec. 28-99. Authority to debar or suspend.

The Chair and Treasurer of the Board has the sole authority to debar or suspend a person from participating in District procurements.

Sec. 28-100. Debarment or suspension causes.

The causes for debarment or suspension shall be limited to the following:

Sec. 28-100(1). Conviction of any person or any 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.

Sec. 28-100(2). Conviction of any person or any 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, or receiving stolen property; or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a District contractor and which conviction arises out of or obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

Sec. 28-100(3). Conviction or civil judgment finding a violation by any person or affiliate of any person under state or federal antitrust statutes arising out of the response to a solicitation.

Sec. 28-100(4). Violations of contract provisions within three (3) years of current debarment action, as set forth below, of a character which are reasonably deemed to be so serious as to justify debarment action:

- (a) Abandonment of a contract without good cause.
- (b) Knowingly fails without good cause to perform in accordance with the specifications or within the time limit provided in the contract.
- (c) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, 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.
- (d) Failure to pay a contractor, subcontractor or material provider as required by A.R.S. Section 32-1129.

Sec. 28-100(5). A determination by the Arizona Registrar of Contractors that the contractor has violated the provisions of A.R.S. § 32-1129 or a finding of responsibility by the municipal court for a violation of Tucson Code section 11-38.

Sec. 28-100(6). Any other cause that the Chair and Treasurer of the Board reasonably determines to be so serious and compelling as to affect responsibility as a District contractor, including suspension or debarment of such person or any affiliate of such person by another governmental entity for any cause listed in this section.

Sec. 28-101. Matters not proper for debarment or suspension.

Any conviction or judgment dated more than three (3) years prior to the notice of suspension or notice of debarment shall not be a basis for any debarment or suspension of a person or an affiliate of a person.

Sec. 28-102. Initiation of debarment.

Upon receipt of information concerning a possible cause for debarment, the Chair and Treasurer of the Board may investigate the possible cause. If the Chair and Treasurer of the Board have a reasonable basis to believe that a cause for debarment exists, the Chair and Treasurer of the Board may debar a person in accordance with this chapter.

Sec. 28-103. Period of debarment.

Sec. 28-103(1). The period of time for a debarment shall not exceed three (3) years from the date of the debarment determination.

Sec. 28-103(2). If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by that other debarring agency.

Sec. 28-104. Notice.

If the Chair and Treasurer of the Board implements debarment, the Chair and Treasurer of the Board shall notify the person in writing within seven (7) days of the debarment action by certified mail, return receipt requested or by any other method that provides evidence of receipt. The person may submit a request to the Chair and Treasurer of the Board for an administrative hearing within fourteen (14) days of issuance of the Chair and Treasurer of the Board's debarment action. If a hearing is granted, it shall be conducted in accordance with this article.

Sec. 28-105. Notice to affiliates.

Sec. 28-105(1). If the Chair and Treasurer of the Board proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.

Sec. 28-105(2). The affiliate shall in writing advise the Chair and Treasurer of the Board within thirty (30) days of receipt of the notice under section 28-104 of its intention to appear under subsection (1) of this section. Failure to provide written notice of appearance within the thirty-day period shall be a waiver of the right to appear in the hearing.

Sec. 28-106. Imputed knowledge.

Sec. 28-106(1). Improper conduct by a person may be imputed to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge or approval of, the contractor.

Sec. 28-106(2). The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge or approval of, the contractor.

Sec. 28-107. Suspension.

Sec. 28-107(1). The Chair and Treasurer of the Board may suspend a person from receiving any award in order to protect the District's interests.

Sec. 28-108. Period and scope of suspension.

The period of suspension shall not be more than sixty (60) days unless the Chair and Treasurer of the Board is informed of compelling reasons to extend the period of suspension.

Sec. 28-109. Suspension notice, hearing, determination and appeal.

Sec. 28-109(1). The Chair and Treasurer of the Board shall notify the person suspended by certified mail, return receipt requested or by any other method that provides evidence of receipt.

Sec. 28-109(2). The notice of suspension shall state:

- (a) The basis for suspension.
- (b) The period, including dates, of the suspension.
- (c) That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered.
- (d) That the person may request a hearing on the suspension if the person files a written request for a hearing with the Chair and Treasurer of the Board within seven (7) days after receipt of the notice.

Sec. 28-109(3). If a suspended party requests a hearing, the Chair and Treasurer of the Board may arrange for a hearing.

Sec. 28-109(4). In the event a hearing is conducted, it shall occur to the extent practicable, in accordance with this article.

Sec. 28-110. Reinstatement.

Sec. 28-110(1). The Chair and Treasurer of the Board may at any time after a final decision on debarment or suspension reinstate a debarred or suspended person or rescind the debarment or suspension upon a determination that the cause upon which the debarment or suspension is based no longer exists.

Sec. 28-110(2). Any debarred or suspended person may request reinstatement by submitting a petition to the Chair and Treasurer of the Board supported by documentary evidence showing that the cause for debarment or suspension no longer exists or has been substantially mitigated.

Sec. 28-110(3). The Chair and Treasurer of the Board may require a hearing on the request for reinstatement.

Sec. 28-110(4). The decision on reinstatement shall be in writing and specify the factors on which it is based.

Sec. 28-111. Limited participation.

The Chair and Treasurer of the Board may allow a debarred or suspended person to participate in District contracts on a limited basis during the debarment or suspension period upon a written determination that participation is advantageous to the District. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Sec. 28-112. Master list for suspension and debarment.

Sec. 28-112(1). The Chair and Treasurer of the Board shall maintain a master list of debarments and suspensions under this article.

Sec. 28-112(2). The master list shall show as a minimum the following information:

(a) The names of those persons whom the District has debarred or suspended under this article.

(b) The basis for the action.

(c) The period of debarment or suspension, including the expiration date.

(d) The name of the debarring or suspending agency, if the District's debarment or suspension is based on debarment or suspension by another governmental agency.

Sec. 28-112(3). The master list shall include a separate section listing persons voluntarily excluded from participation in District contracts.

Sec. 28-113. Hearing procedures.

Sec. 28-113(1). If a hearing is required or permitted under this article, the Chair and Treasurer of the Board shall appoint a hearing officer.

Sec. 28-113(2). If a hearing is required or permitted under this article, the hearing officer shall arrange for a prompt hearing and notify the parties of the time and place of the hearing.

Sec. 28-113(3). The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.

Sec. 28-113(4). The hearing officer may:

(a) Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(b) Require parties to state their positions concerning the various issues in the proceeding.

(c) Require parties to produce for examination those relevant witnesses and documents under their control.

(d) Rule on motions and other procedural items on matters pending before such officer.

(e) Regulate the course of the hearing and conduct of participants.

(f) Establish time limits for submission of motions or memoranda.

(g) Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:

(i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;

(ii) Excluding all testimony of an unresponsive or evasive witness; and

(iii) Expelling the person from further participation in the hearing.

(h) Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice.

(i) Administer oaths or affirmations.

(j) Assess or apportion damages or costs associated with the hearing matter or the proceedings to the parties involved.

Sec. 28-113(5). A transcribed record of the hearing shall be made available at cost to the requesting party.

Sec. 28-114. Recommendation by the hearing officer.

Sec. 28-114(1). The hearing officer shall make a recommendation to the Chair and Treasurer of the Board based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.

Sec. 28-114(2). The Chair and Treasurer of the Board may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or make any other appropriate disposition.

Sec. 28-115. Final decision by the Chair and Treasurer of the Board.

A decision by the Chair and Treasurer of the Board shall be final. The decision shall be sent to all parties by certified mail, return receipt requested or by any other method that provides evidence of receipt. The decision shall state that any party adversely affected may within ten (10) days request a rehearing with the Chair and Treasurer of the Board. If a stay was issued, the final decision by the Chair and Treasurer of the Board shall lift any such stay, unless the Chair and Treasurer of the Board determines that the continued stay is necessary to protect the substantial interest of the District.

Sec. 28-116. Rehearing of Chair and Treasurer of the Board decision.

Sec. 28-116(1). Any party, including a contract officer, who is aggrieved by the Chair and Treasurer of the Board's decision may file a written request for rehearing of the decision specifying the particular grounds.

(a) The request for rehearing shall be filed with the Chair and Treasurer of the Board within ten (10) days after receipt of the decision and shall include any supporting affidavits.

(b) The request shall be clearly designated as a "request for rehearing."

(c) The Chair and Treasurer of the Board shall within five (5) days after the request is filed notify interested parties of the request by certified mail, return receipt requested or by any other method that provides evidence of receipt.

Sec. 28-116(2). An interested party may, within ten (10) days after receipt of the notice, file a response including opposing affidavits.

Sec. 28-116(3). Any argument not raised in the request or in a response is waived.

Sec. 28-116(4). The Chair and Treasurer of the Board may require the filing of written briefs and may provide for oral argument.

Sec. 28-116(5). A rehearing of the decision may be granted for any of the following causes:

(a) Irregularity in the proceedings before the Chair and Treasurer of the Board or an abuse of discretion by the Chair and Treasurer of the Board, depriving the requesting party of a fair hearing.

(b) Misconduct of the Chair and Treasurer of the Board, the Chair and Treasurer of the Board's staff, the hearing officer or any party.

(c) Accident or surprise that could not have been prevented by ordinary prudence.

(d) Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing.

(e) Excessive or insufficient penalties.

(f) Error in the admission or rejection of evidence or other error of law occurring at the hearing.

(g) A showing that the decision is not justified by the evidence or is contrary to law.

Sec. 28-116(6). The Chair and Treasurer of the Board's decision concerning a request for rehearing shall be in writing and shall state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the date, time and place of the rehearing. The rehearing shall cover only those matters specified in the decision.

Sec. 28-116(7). The Chair and Treasurer of the Board, within the time for filing a request for rehearing under this section, may, on the Chair and Treasurer of the Board's own initiative, order a rehearing of the Chair and Treasurer of the Board's decision for any reason for which the Chair and Treasurer of the Board might have granted a rehearing on request of a party.

Sec. 28-117. Judicial review of protest, claims, debarments or suspensions.

Any final decision of the Chair and Treasurer of the Board of a protest (§ 28-77 et seq.), claim (§ 28-91 et seq.), debarment (§ 28-99 et seq.), or suspension (§ 28-99 et seq.) under this chapter is subject to special action review by any party to the proceeding. Exhaustion of the procedures set forth in this Code shall be a condition precedent to seeking judicial review and the party seeking review shall file the complaint within thirty (30) days of a final decision by the Chair and Treasurer of the Board.

Sec. 28-118. Exclusive remedy.

Notwithstanding any law to the contrary, this article shall provide the exclusive procedure for asserting a claim or cause of action against this District arising in relation to any procurement conducted under this chapter.

Secs. 28-119—28-125. Reserved.

ARTICLE X.

COOPERATIVE PURCHASING

Sec. 28-126. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-126(1). "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.

Sec. 28-126(2). "Eligible public procurement unit" means any state, county, District, town, and any other political subdivision, public authority, educational, health or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services and construction, and any not-for-profit entity.

Sec. 28-127. Applicability.

Agreements entered into pursuant to this article shall be limited to the areas of procurement, warehousing or materials management.

Sec. 28-128. Cooperative purchasing agreements required.

The District is not authorized to participate in cooperative purchasing unless a cooperative purchasing agreement is executed between the parties or the parties are members of a cooperative purchasing group or authority that permits cooperative use amongst its membership. All agreements entered into pursuant to this article shall be approved by the Chair and Treasurer of the Board.

Sec. 28-129. Cooperative purchasing authorized.

The District may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more eligible procurement units in accordance with an agreement entered into between the participants. An agreement entered into as provided in this article is exempt from section 11-952, subsections D, E and F. Parties under a cooperative purchasing agreement may:

Sec. 28-129(1). Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.

Sec. 28-129(2). Cooperatively use materials or services.

Sec. 28-129(3). Commonly use or share warehousing facilities, capital equipment and other facilities.

Sec. 28-129(4). Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.

Sec. 28-129(5). On request, make available to other eligible public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

The activities described in paragraphs (1) through (5) do not limit the activities of parties under a cooperative purchasing agreement.

Secs. 28-130, 28-131. Reserved.

ARTICLE XI.

RESERVED

Secs. 28-132--28-159. Reserved.