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MC1-401 DUTIES AND RESPONSIBILITIES

The Chief Procurement Officer should establish guidelines governing the preparation, maintenance and content of Specifications for Commodities, Services and Construction required by Maricopa County. The Chief Procurement Officer shall, prepare, issue, revise, maintain and monitor the use of Specifications for Construction, Commodities and Services required by Maricopa County.

MC1-402 PREPARATION OF SPECIFICATIONS


- A. Specifications shall be prepared by the Chief Procurement Officer or Purchasing Agency pursuant to this Code or by Contract pursuant to MC1-409.
- B. In an emergency under MC1-345, any Specifications may be utilized by the Purchasing Agency without regard to the provisions of this Code.

MC1-403 CONTENT OF SPECIFICATIONS

- A. A Specification may provide alternate descriptions of Commodities, Services or Construction items where two or more design, functional, or performance criteria will satisfactorily meet Maricopa County's requirement.
- B. To the extent practicable, Specifications shall emphasize functional or performance criteria. To facilitate the use of such criteria, Using Agencies shall use reasonable efforts to include the principal functional or performance requirements as a part of their purchase requisitions.

MC1-404 TYPES OF SPECIFICATIONS

- A. Specifications for a common or general use items.
 - 1. To the extent practicable, a Specification for common or general use item shall be prepared and utilized when:
 - a. A Commodity, Service or Construction item is used in common by several Using Agencies or used repeatedly by one Using Agency, and the characteristics of the Commodity, Service or Construction item, as commercially produced or provided, remain relatively stable while the frequency or volume of Procurements is significant.
 - b. Maricopa County's recurring needs may require uniquely designed or specially produced items.


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B. Brand Name or Equal Specifications

1. A Brand Name or Equal Specification may be used when the Procurement Officer determines that use of a Brand Name or Equal Specification is Advantageous to Maricopa County and that:
 - a. No Specification for a common or general use item or Qualified Products list is available;
 - b. Time does not permit the preparation of another form of Specification, other than a Brand Name or Equal Specification; or
 - c. The nature of the product or Maricopa County's requirements makes use of a Brand Name or Equal Specification suitable for the Procurement.
2. Such determination may be made for categories of Commodities, Services or Construction items or, in appropriate circumstances, for an entire Procurement action even though a number of different items are being procured.
3. A Brand Name or Equal Specification shall designate as many different brands as are practicable as "or equal" references.
4. A Brand Name or Equal Specification shall include a description of the particular design, functional, or performance characteristics that are required unless the Procurement Officer determines that the essential characteristics of the brand names designated in the Specifications are commonly known.
5. A Solicitation that uses a Brand Name or Equal Specification shall explain that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The Solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration.

C. Brand Name Specifications

1. A Brand Name Specification may be prepared and utilized only if the Procurement Officer makes a Written Determination that only the identified brand name item will satisfy Maricopa County's needs.
2. If a Brand Name Specification is utilized the Procurement Officer shall, to the extent practicable, identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve the maximum practicable competition. If only one source can supply the requirement, the

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Procurement shall be made under MC1-343.

D. Qualified Products List. A Qualified Products List may be prepared and utilized when:

1. A Procurement Officer determines that testing or examination of the Commodities or Construction items prior to issuance of the Solicitation is desirable or necessary in order to best satisfy Maricopa County's requirements.
2. The Procurement Officer has solicited as many potential suppliers as practicable to submit products for testing and examination to determine acceptability for inclusion on a Qualified Products List. Any potential supplier, even though not solicited, may offer its products for consideration in accordance with the schedule or procedure established for this purpose. The Qualified Products List shall not be modified after the Solicitation is issued.
3. Inclusion is based on results of tests or examinations conducted in accordance with requirements published by the Office of Procurement Services.
4. Qualified Products Lists' test results shall be made available in a manner to protect the identity of the supplier.

MC1-405 RELATIONSHIP WITH USING AGENCIES

The Chief Procurement Officer or Purchasing Agency may obtain advice and assistance from personnel of Using Agencies in the development of Specifications.


MC1-406 MAXIMUM PRACTICABLE COMPETITION

All Specifications shall seek to promote overall economy for the purpose intended and encourage competition in satisfying Maricopa County's needs and shall not be unduly restrictive.

MC1-407 REQUIREMENTS OF NONRESTRICTIVNESS

A. Nonexclusive Specifications:

1. To the extent practicable and unless otherwise permitted by this Code, all Specifications shall describe Maricopa County's requirements in a manner that does not unnecessarily exclude a Commodity, Service or Construction item.
2. Proprietary Specifications shall not be used unless the Chief Procurement Officer determines in writing that such Specifications are required by demonstrable technological justification and that it is not practicable or Advantageous to use a

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less restrictive Specification. Past success in the Commodity's performance, traditional purchasing practices, or inconvenience of preparing Specifications do not justify the use of Proprietary Specifications.

- B. To the extent practicable, Maricopa County shall use accepted commercial Specifications and shall procure standard commercial Commodities.

MC1-408 SPECIFICATIONS, INTENT AND COMPOSITION


All Specifications, including those prepared by other than County personnel for public Contracts, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying Maricopa County's needs and not be unduly restrictive.

MC1-409 PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN MARICOPA COUNTY PERSONNEL

- A. The requirements of this Article shall apply to all Specifications prepared by other than Maricopa County Employee. Contracts for the preparation of Specifications by other than County personnel shall require the Specification writer to adhere to such requirements.
- B. If Specifications are prepared by other than Maricopa County Employee, the Person preparing the Specifications shall be prohibited from responding to any resulting Solicitation unless the Chief Procurement Officer determines in writing that permitting the Person who prepared the Specifications to respond is Advantageous to Maricopa County and this Person does not have a unfair advantage.

MC1-410 SPECIFICATIONS FOR ENERGY CONSUMPTIVE MATERIALS

The Chief Procurement Officer may utilize Specifications based on considerations of energy conservation for the Procurement of energy consuming material.

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MC1-501 APPLICABILITY


Article 5 of the Maricopa County Procurement Code defines the requirements and authorities for Procurement and Contract activities associated with the design, Construction, reconstruction, and remodel of Maricopa County facilities and structures. This Article also applies to the Procurement of various Professional Services required by Maricopa County to meet its needs related to the design, Construction, reconstruction, and remodel of Maricopa County facilities and structures.

MC1-502 RESPONSIBILITIES AND AUTHORITY

- A. The Chief Procurement Officer shall have the following delegated authorities:
1. Change Order authority shall not exceed \$1,000,000 for each Contract unless specifically authorized by the Board of Supervisors for a specific project or Contract. The Board of Supervisors may also delegate additional Change Order authority to the Chief Procurement Officer for a specific project or Contract.
 2. Authority to issue and Award Limited Scope Construction Contracts up to the limits specified in A.R.S. § 34-201.C and D and § 28-6713.B.
 3. Authority to issue and Award Simplified Construction Procurement Program Contracts.
 4. Carry out duties and responsibilities delegated by the Board of Supervisors.
 5. Implement and maintain an Article 5 Procedures Manual consistent with this Code to amplify or clarify the Procurement and management of all Article 5 Construction and Professional Services Contracts.
- B. The Chief Procurement Officer shall determine the annual statutory Contracting limits pursuant to A.R.S. § 34-201.C and § 28-6713.B. Projects shall not be artificially divided or fragmented to circumvent the statutorily defined limits.


MC1-503 TYPES OF ARTICLE 5 PROCUREMENT

- A. Titles 34 and 41 of the Arizona Revised Statutes authorize Maricopa County to conduct several types of Construction and Professional Service Procurements. These Procurements are: Limited Scope Construction Procurement, Simplified Construction Procurement, Design-Bid-Build, Design-Build, Construction-Manager-At-Risk, and Job-Order Contracting. In addition, Title 28 of the Arizona Revised Statutes authorizes the

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Maricopa County Department of Transportation to utilize the equivalent of the Title 34 Design-Bid-Build process. Procedures about implementation of each of these Procurement methods are included in the Article 5 Procedures Manual. A brief description of each Article 5 Procurement method is as follows:

1. Limited Scope Construction Procurement - Statutory dollar limited Construction with a simplified Bid process. The Contracts are Awarded by the Chief Procurement Officer or as delegated by the Chief Procurement Officer.
2. Simplified Construction Procurement Program - Limited to \$100,000 including all Change Orders subsequent to Award. Invitations for Bids shall be sent to Contractors and consultants listed on the annually updated consultant and Contractor register also referred to as the Article 5 Register. The Contracts are Awarded by the Chief Procurement Officer or as delegated by the Chief Procurement Officer.
3. Design-Bid-Build - The County's Procurement method in which sequentially a consultant under one Contract designs a project, the project is publicly Bid, and the lowest Responsible and Responsive Bidder constructs the project under a second and separate Contract. Contracts with a value of \$5,000,000 or less may be Awarded by the Chief Procurement Officer. Other Contracts are Awarded by the Board of Supervisors.
4. Design-Build - A Procurement method where one Contract is Awarded for both the design and Construction of a project. Design is normally accomplished prior to Construction but, design and Construction may occur simultaneously.
5. Construction-Manager-At-Risk - A Procurement method where two Contracts are Awarded separately for the design and the Construction of a project. Multiple Contracts to phase Construction may be Awarded under the condition the multiple Contracts are Advantageous to the project and County. Design and Construction may occur sequentially or concurrently.
6. Job-Order-Contracting - A project delivery method limited to five years by Arizona Revised Statutes and awarded by the Board of Supervisors, 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 (or Task Orders) issued during the Contract.

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- c. Financial Services, maintenance Services, operation Services, preconstruction Services, design Services and other Services related to Construction may be included.

Note: Sunset Provisions for Subparagraphs 4, 5, and 6 Above:


- d. Contracts for vertical Construction under Title 34 have no sunset date.
- e. Contracts for horizontal Construction under Title 34 have a sunset date of June 30, 2020.
- f. Contracts for horizontal Construction under Title 28 have a sunset date of December 31, 2025.
- g. No Contracts may be entered into after the above-referenced sunset dates for the delivery methods listed in subparagraphs 4, 5, and 6 above unless the sunset dates are otherwise extended by amendment to the applicable Arizona Revised Statute.

B. Limited Scope Construction Procurement

1. The Board of Supervisors authorizes the Chief Procurement Officer to approve and Award Construction Contracts issued in accordance with this Section.
2. The following procedures will be used to implement Limited Scope Construction Procurements:
 - a. Prepare Specifications and scope of work. The scope of work shall be written in sufficient detail to enable a Contractor to submit a written response for the described work. The scope of work may include drawings, sketches, job project coordination requirements, or other data affecting the Price. The scope of work may also require a Contractor to subcontract a minor portion of the project with a consultant to prepare drawings or other documents.
 - b. Prepare a Cost estimate for the scope of work in compliance with A.R.S. § 34- 201 et seq. and this Code.
 - c. Prepare a Request for Quotation listing the date, time and location for receipt of sealed responses. The Request for Quotation will be on a form approved by the Chief Procurement Officer.

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- d. Responses to a Request for Quotation will be solicited in accordance with the following guidelines. A no-Bid response shall constitute a response:
- i. For work of a nominal value of \$5,000 or less, one written quotation is required.
 - ii. For work greater than \$5,000 but less than the statutory ceiling, (A.R.S. § 34-201.C and § 28-6713. B), three written quotations are required.
- e. Respondents must submit Offers as specified in the Request for Quotation. Responses received after the due date and time or otherwise not submitted in compliance with the Solicitation instructions shall be non-responsive and will be returned to the Respondent unopened.
- f. Award of the Contract shall be made by the Chief Procurement Officer and shall be made to the lowest Priced Responsive and Responsible Respondent.
- g. Changes in the scope of work after Award shall be described in a Change Order on an approved form. The Change Order shall be signed by the appropriate department director and approved by the Chief Procurement Officer. The initial Contract shall direct the Contractor not to begin work as the result of any change until receipt of a written and approved Change Order.
- h. Payment for work performed, should when practical, be made in one lump sum. Payment will be made within contractual terms or statute as applicable after final County acceptance. If the Contract period exceeds two months, the Contractor may request a partial payment in compliance with standard partial payment provisions.
- C. Simplified Construction Procurement Program
- 1. A.R.S. § 41-2535.D shall be formally adopted as an approved Article 5 Procurement method as set forth herein. A Procurement involving Construction not exceeding \$100,000 may be made pursuant to policies and procedures adopted by the Chief Procurement Officer in accordance with this section. At a minimum the policies and procedures shall require:
 - a. A list shall be maintained of persons who desire to receive Solicitations to Bid on Construction projects to which additions shall be permitted


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throughout the year.

- b. The list of Persons for Solicitations to Bid shall be available for public inspection.
- c. Agreements for Construction shall be on forms approved by the Chief Procurement Officer.
- d. A Contractor shall provide a Performance Bond and a Payment Bond as required by A.R.S. § 41-2574 for Construction Contracts.
- e. All information submitted by Respondents pursuant to this section shall be held confidential according to A.R.S. § 41-2533, Subsection D.
- f. All Construction Bids shall be opened publicly at the time, date and location as designated in the Solicitation.
- g. All Persons desiring to submit Bids be treated equitably and the information related to each project be available to all prospective Respondents.
- h. Competition for Construction projects under the Simplified Construction Procurement program will be encouraged to the maximum extent possible.
- i. Award of the Contract shall be made by the Chief Procurement Officer and shall be made to the lowest priced Responsive and Responsible Respondent.

D. Design-Bid-Build

1. A process where a design consultant is selected on the basis of qualifications and a fee for the Professional Services is Negotiated. Once the design is completed, the project is advertised for Bid. The Construction Contract is Awarded to the lowest Responsive and Responsible Respondent. In determining the lowest Responsible Respondent for horizontal Construction the following is addressed: the County may consider the time of completion proposed by the Respondent if the County determines this procedure will be Advantageous by providing a substantial fiscal benefit or the use of the traditional Awarding of Contracts is not practicable for meeting desired Construction standards or delivery schedules. The formula for considering the time of completion must be specifically stated in the Solicitation

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information and approved by the Chief Procurement Officer. Except for the Maricopa County Department of Transportation whose time of completion factor is limited to five projects, all other County Departments have unlimited projects (A.R.S. 28- 6713.C.).


2. Direct selection of Professional Services to be used in Article 5 Procurement is authorized for design work in Design-Bid-Build procedures not to exceed \$100,000.
3. Specific and mandatory Design-Bid-Build procedures are contained in the Article 5 Procedures Manual.

E. Design-Build

1. A qualification-based selection method. Authority for Design-Build differs by type of Construction. Specific and mandatory procedures are contained in the Article 5 Procedures Manual.
2. The Design-Build Procurement is a qualification-based selection process that produces a short list of qualified Respondents. Negotiations are initiated with the highest qualified Respondent or a Request for Proposal is sent to all the Respondents listed on the short list.
3. For each project for horizontal Construction under a Design-Build Construction Services Contract, the licensed Contractor Awarded the Contract shall perform, with the Contractor's own organization, Construction work that amounts to not less than forty-five per cent of the total Contract Price for Construction. For purposes of this paragraph, the total Contract Price for Construction does not include the Cost of preconstruction Services, design Services or any other related Services for the Cost to procure any right-of-way or other Cost of condemnation.

F. Construction-Manager-At-Risk

1. A qualification-based selection method resulting in multiple Contracts for the project. Authority for Construction-Manager-At-Risk differs by type of Construction. Specific and mandatory procedures are contained in the Article 5 Procedures Manual.
2. Construction-Manager-At-Risk Procurement is a qualification-based selection process that produces a short list of qualified Respondents. Negotiations are initiated with the highest qualified Respondent or a Request for Proposal is sent to all the Respondents listed on the short list.

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3. For each project for horizontal Construction under a Construction-Manager-At-Risk Construction Services Contract, the licensed Contractor Awarded the Contract shall perform, with the Contractor's own organization, Construction work that amounts to not less than forty-five per cent of the total Contract Price for Construction. For purposes of this paragraph, the total Contract Price for Construction does not include the Cost of preconstruction Services, design Services or any other related Services for the Cost to procure any right-of-way or other Cost of condemnation.

G. Job-Order Contracting

1. This Procurement method is a qualification-based process that may include design Services and is for "on-call" Construction capability. This type Service may be procured for up to five years. If the Contract allows for renewals or extensions, the provisions for and the conditions of the renewals or extensions must be included in the Solicitation.
2. Specific and mandatory procedures are contained in the Article 5 Procedures Manual. The single maximum value of a work assignment issued under this procedure by statute is \$1,000,000 or such higher or lower amount as adopted by the Board of Supervisors as the maximum amount of an individual job order. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement. The maximum yearly Contract value of a Job- Order-Contract is \$5,000,000. For the purposes of this sub-paragraph, yearly means the twelve months subsequent to Award of the Contract.

H. Procurement Of Consultant Services Other Than Architect, Landscape Architect, Assayer, Geologist, and Land Surveyor Consultants

1. This section applies to consultants other than those listed in A.R.S. 32-101. This list includes but is not limited to hydrologists, appraisers and archaeologists.
2. Selection of consultants or Professional Services required during the process of Construction of County facilities and structures are to be made in accordance with procedures contained in the Article 5 Procedures Manual.

- I. Any other type of Contract may be used only if the Procurement Officer determines in writing prior to Solicitation that the use of that Contract type is permitted by law and is Advantageous to Maricopa County.

MC1-504 REGISTER OF INTERESTED CONSULTANTS AND CONTRACTORS

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The Chief Procurement Officer will maintain a register of consultants and Contractors that have expressed an interest in performing work for the County and have provided evidence of professional qualifications for such work. The Chief Procurement Officer will notify consultants and Contractors listed on the register annually of their status and invite updating of their professional qualifications through a notice published in the official newspaper of the County. In addition, a public advertisement may be placed in a major newspaper of general circulation in the Phoenix area inviting consultants and Contractors to apply for inclusion on the register. The register, also referred to as the Article 5 register, may be categorized to reflect the consultant or Contractor's primary field of expertise. The County's process for updating the register is further explained in the Maricopa County Article 5 Procedures Manual. Consultants and Contractors may be removed from the register in accordance with Article 9 of this code.

MC1-505 SOLE SOURCE PROCUREMENT

Except for Direct Select Procurement, if the need for a sole source Procurement should arise on a Construction project or to obtain a consultant required the Procurement shall be conducted in accordance with MC1-347 and 348 of this Code.

MC1-506 EMERGENCY PROCUREMENT

Emergency Procurement shall be conducted in accordance with MC1-350 of this Code.


MC1-507 PUBLIC NOTICE

Construction Procurement with a value greater than the amount stipulated in A.R.S. §§ 34-201 or 28-6713 shall be advertised in accordance with A.R.S. §§ 39-204 or 28-6713.

MC1-508 ADDENDA

A. Clarifications or changes to the Solicitations made in response to Respondent question(s) shall be transmitted to all prospective Respondents by an addendum. The addendum shall document all changes or revisions to the Solicitation and shall include at a minimum the following information:

1. Number of addendum, title and Solicitation number of the project;
2. Indication of a revised or unchanged Bid opening date and time; and
3. Respondents acknowledgment of receipt of the addendum on Bids is required for

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their response to be considered Responsive to the Solicitation.

- B. An addendum shall be issued within a reasonable time before Bid opening to allow prospective Respondents time in which to prepare their Bids. If, in the judgment of the Procurement Officer, the date and time set for Bid opening does not permit sufficient time for Bid preparation, the date and time for the Bid opening will be extended in the addendum.


MC1-509 MISTAKES IN BIDS

If a Respondent alleges a mistake in their Bid, the Procurement Officer shall require the Respondent to submit within a reasonable time, not to exceed 24 hours from Bid opening, the original estimating documents along with any other Price development documents and information to verify said mistake. In addition to this requirement, mistakes in Bids shall be handled in accordance with MC1-322.

MC1-510 BOND REQUIREMENTS

A. Bid Security

1. As a guarantee that the Contractor will enter into a Contract to perform in accordance with the plans and Specifications, Bid security shall be required for all Competitive Sealed Bidding/Proposals for Construction if the Price is estimated to exceed the amount established by A.R.S. § 41-2535. Bid security shall be a certified check, cashier's check or surety Bond for ten per cent of the amount of the Bid for Design-Bid-Build, for 10% of the Construction expenses in a Design-Build Proposal, or 10% of the estimated first year Construction Costs of a Job-Order-Contracting Proposal. Nothing in this section prevents a County Governmental Unit from requiring such Bid security in relation to any Construction Contract. The surety Bond shall be executed and furnished as required by Title 34, Chapter 2, of the Arizona Revised Code and the conditions and provisions of the surety Bond regarding the surety's obligations shall follow the form required by A.R.S. §34-201, subsection A, paragraph 3. For Design- Build and Job-Order Contracting, the surety Bond shall be executed and furnished as required by Title 34, Chapter 6, of the Arizona Revised Code and the conditions and provisions of the surety Bond regarding the surety's obligations shall follow the form required by A.R.S. §34-606, subsection D.
2. If the Invitation For Bids or Competitive Sealed Proposals requires Bid security, noncompliance requires the Offer be rejected unless, pursuant to policies and procedures, it is determined the Bid or Proposal fails to comply in a non-

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substantial manner with the security requirements.

3. After the Offers are opened, they are irrevocable for the period specified in the Invitation For Bids or Competitive Sealed Proposals, except as provided in A.R.S. § 41-2533, subsection F. If a Respondent is permitted to withdraw its Bid or Competitive Sealed Proposal before Award, no action may be taken against the Respondent or the Bid security.
4. An annual or one-time surety Bond executed by a surety company or companies holding a certificate of authority to transact surety business in this State issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, and in a form prescribed by A.R.S. § 41-2573 and R2-7-505; or a certified or cashier's check shall be acceptable Bid security.


B. Non-Substantial Failure to Comply with Bid Security

The Procurement Officer may determine noncompliance of an Offer's security is non-substantial if:

1. Only one Offer is received and there is not sufficient time to rebid; or
2. The amount of the security submitted, although less than the amount required by the Solicitation, is equal to, or greater than the difference between the apparent low Bid and the next higher acceptable Bid; or
3. The security is inadequate as a result of correcting or modifying a Offer in accordance with MC1-322 (Mistakes in Bids), if the Respondent increases the amount of security to required limits within two days after notification.

C. Performance and Payment Bonds

1. Performance and Payment Bonds are required for all Construction Contracts. Specific Bond requirement, by Contract type, are included in the Article 5 Procedures Manual.
2. If the Contractor fails to provide the required Performance and/or Payment Bonds within the time specified by the Contract, the Offer shall be rejected, Bid security forfeited, and the Contract Awarded to the next lowest Responsive and Responsible Respondent.
3. Performance Bonds are to be submitted to the County executed by a surety

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company holding a certificate of authority to transact surety business in this State issued by the Director of the Department of Insurance in the amount and for the duration specified in the Contract.


4. Payment Bonds are to be submitted to the County, executed by a surety company holding a certificate of authority to transact surety business in this State issued by the Director of the Department of Insurance for the protection of all Persons supplying labor and Material to the Contractor or its subcontractors for the performance of the work required by the Contract. The Bond shall be in the amount specified in the Contract.
5. The Performance Bond and Payment Bond shall be delivered by the Contractor to the County within the time limits set forth in the Solicitation. If the Contractor fails to deliver the required Performance or Payment Bond, the Contractors Offer shall be rejected, its Bid security shall be forfeited, and Award of the Contract made to the next lowest Responsive, Responsible Respondent.

MCI-511 **CONTRACT AWARD AND NOTICE TO PROCEED**

- A. Contracts are Awarded by the Board of Supervisors and signed by the Chairman of the Board of Supervisors unless the authority has been clearly delegated and authorized to others by the Board of Supervisors.
- B. Upon receipt from the Contractor of the required Bonds and insurance after Award, a Notice to Proceed will be issued which begins the performance period of the Contract.

MCI-512 **CHANGE ORDER AUTHORIZATION**

- A. The Chief Procurement Officer may delegate authority to modify Contracts through issuance of Change Orders as listed below, provided;
 1. The Using Agency issuing the Change Order has been formally delegated Procurement authority by the Chief Procurement Officer; and
 2. The Change Order is reviewed and approved by the Procurement Officer assigned to that department; and
 3. The Change Order is within the authority limits approved by the Chief Procurement Officer for that Using Agency; and

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4. A standardized Change Order justification form is approved by all required Persons and placed in the Contract file.

B. Change Order Classification:

1. Time Only Change Orders - Change Orders that address change within the time elements of a Contract may be approved and signed by the Chief Procurement Officer or if delegated by the Chief Procurement Officer, by the department director of a department.
2. Additive Change Orders – Any Contract modification(s) resulting in an increase in the Contract Cost may be approved by the Chief Procurement Officer without Board of Supervisor approval up to a cumulative value for Change Orders of \$1,000,000 per Contract. A portion of this authority may be delegated by the Chief Procurement Officer to of a department up to a maximum cumulative value for Change Orders of \$250,000 per Contract. The Change Order authority for department directors is determined by the value of the Contract, the calculation methodology for which can be found in the Article 5 Procedures Manual. Change Order authority may be increased or modified by action of the Board of Supervisors dependent on the circumstances of the project.
3. Deductive Change Orders - Any Contract modification(s) resulting in a reduction in the Contract Cost may be approved by the Chief Procurement Officer without Board of Supervisors approval unless the modification will result in a substantial change in the scope of work. The requirements of MC1-513.A must be met.
4. Scope of Work Change Order- All Change Orders that will result in a substantial change in scope of work, regardless of the Cost increase or decrease requires Board of Supervisors approval.
5. Contract Term Change Order – Change Orders resulting in a change to the terms and conditions of the Contract, including but not limited to updated Pricing for term and on-call Contracts, so long as said change does not alter the intended purpose of the Contract or place the County in a less advantageous position, may be signed by the Chief Procurement Officer or delegated to an Article 5 department director. All other changes to the terms and conditions of the Contract must be approved by the Board of Supervisors.

C. Change Order Authority

The Chief Procurement Officer may request increased Change Order authority based on

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the uniqueness of a specific project or be granted change order authority for a specific project or Contract.

MC1-513 CONTRACT PAYMENT

- A. Construction Contract payment requests submitted in American Institute of Architects (AIA) approved formats will be made in accordance with rates and schedules identified in the Contract and are to be made within fourteen (14) calendar days of receipt of a certified and approved payment request. An estimate of the work submitted shall be deemed approved and certified for payment after seven (7) days from the date of submission unless before that time the Using Agency prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the Contract. The Using Agency may withhold an amount from the progress payment sufficient to pay the expenses the Using Agency reasonably expects to incur in correcting the deficiency set forth in the written finding. Payment requests not submitted within AIA formats shall be paid in accordance with the terms and conditions of the Contract.

- B. Retention - Unless arrangements have been made for substitute security and except for Job-Order-Contracting, the Using Agency will retain 10% of each progress payment made to Contractors until the work is 50% complete. After the Contract is 50% completed no more than 5% of the amount of any subsequent progress payments made under the Contract may be retained providing the Contractor is making satisfactory progress on the project. Retention is to be released upon final acceptance of the work and receipt of a certificate of performance. Retention must be returned within sixty (60) days after final completion or filing the notice of final completion.

Note: Retention for Design-Build Construction Services and Construction-Manager-at-Risk are optional. Retention for Job-Order-Contracting Construction Services is prohibited.


- C. Consultant progress payment requests which are not approved will be returned to the consultant clearly stating the non-compliance. The consultant will also be notified payment is being held pending receipt of a revised and corrected payment request.

- D. Notification of progress payment to a prime Contractor shall be made to the subcontractor within five (5) days of each payment, if requested by the subcontractor.

- E. A forbearance procedure may be used by the County when, through no fault of the County, a consultant or Contractor is unable or unwilling to complete the required scope of work within the Contracted performance period. The forbearance shall acknowledge

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the consultant or Contractor's past due performance while maintaining and protecting the County's Contractual rights and remedies. The seriousness of meeting the schedules and completion dates shall be conveyed to the consultant or Contractor during fee negotiations and time of Award and Contract performance.


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CONTRACT CLAUSES				

MC1-601 CONTRACT CLAUSES


- A. The Director may promulgate procedures permitting or requiring the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance or other Contract provisions.

- B. The Director may modify the clauses promulgated under this Article for inclusion in any particular Maricopa County Contract, provided that any variation is stated in the Solicitation.

- C. All Contract clauses shall be consistent with the provisions of this Code.

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	SUBJECT MATERIALS MANAGEMENT		

MC1-801 COUNTY PROPERTY PROCEDURES

The Board of Supervisors shall approve procedures governing:


- A. The management of Materials during their entire Life Cycle.
- B. The acquisition and distribution of federal surplus Materials.
- C. The sale, lease, trade-in, or disposal of Surplus Materials.
- D. The transfer of Excess Materials, Surplus Materials and Fixed Assets.
- E. The trade-in of Excess Materials, Surplus Materials and Fixed Assets.

MC1-802 MANAGEMENT OF MATERIALS

- A. The Procurement Officer shall ascertain or verify that Materials and Services procured by such Officer conform to Specifications as set forth in the Solicitation. The Procurement Officer may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities, and Contract with others for inspection or testing work as needed. The Procurement Officer may delegate authority for inspection and testing.
- B. The Director shall have general responsibility for establishing and maintaining a commodity code numbering system which can be used for all inventories of expendable supplies, whether stored or in use belonging to Maricopa County Agencies. This responsibility shall not relieve any agency of accountability for supplies under its control.
- C. Each Using Agency shall exercise general supervision of any receiving, storage, and distribution facilities they maintain. All warehouses and storage areas shall be inventoried at least annually.
- D. Each Maricopa County Using Agency shall conduct inventories at the end of the fiscal year in accordance with the procedures set forth in the Maricopa County Property Manual.

MC1-803 DISPOSITION

- A. The Board of Supervisors acts in all matters pertaining to the disposition of Surplus Materials.
- B. Using Agencies shall follow procedures and forms prescribed in the Maricopa County


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Property Manual to transfer Surplus Materials.

- C. Transfer of Excess or Surplus Materials to Surplus Property or between other Maricopa County Using Agencies is the responsibility of the Using Agency.
- D. Disposition of Surplus Materials:
 - 1. Surplus Materials shall be disposed of as provided by law. Only certified funds or cash shall be accepted for sales of Surplus Materials.
 - 2. Auctions shall be advertised in accordance with statutory provisions. When making sales by auction, the Solicitation shall specify all the terms and conditions of any sale.
 - 3. Before Surplus Materials are disposed of by trade-in to a vendor for credit on an acquisition, the Board of Supervisors shall approve such disposal.
- E. Without a public auction, by unanimous approval of the Board of Supervisors, Surplus Material may be sold or leased to any other duly constituted governmental entity including the State, cities, towns, other counties; or County property may be sold or leased, for a specific use, to any solely charitable, social or benevolent nonprofit organization incorporated in or operating in this State (A.R.S. § 11-251.9 and 11-251.55).
- F. Maricopa County may sell, through retail sales, property which the Board of Supervisors deems no longer useful and designates as surplus. Property will be sold at no less than fair market value if the property has a fair market value documented at no more than \$1,000. Property assessed to be at a fair market value in excess of \$1,000 but less than \$15,000 will be sold by private Bid which prior to completion of sale must be advertised in a notice of sale. Notice of sale shall be published in a newspaper of general circulation in the County and for thirty (30) days after such notice Bids may be submitted that exceed the sale price by at least five percent. The county shall select the highest Bid received at the end of the thirty (30) day period.

MC1-804 FIXED ASSET INVENTORY RECORDS

Using Agencies shall submit to the Finance Department verification by a physical count of Fixed Assets as provided from the Finance Department at the end of the fiscal year and at the change of Department or Agency Head.

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MC1-805 LOST, STOLEN OR DESTROYED MATERIALS


The loss, theft or destruction of materials shall be immediately reported to the appropriate law enforcement agency and/or Risk Management office.

MC1-806 FEDERAL AND STATE SURPLUS MATERIALS PROGRAM

A Using Agency may acquire Federal Surplus Property or State Surplus Property Materials as may be usable and necessary for public purposes by a Using Agency.

MC1-807 AUTHORITY FOR TRANSFER OF MATERIALS

Notwithstanding any provision of law to the contrary, the Board of Supervisors may confer on any officer or employee thereof continuing authority to secure the transfer to it of Federal and State surplus materials and to obligate its monies to the extent necessary to comply with the laws and conditions of such transfers.


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MC1-901 RULES OF PROCEDURE

Rules of procedure providing for the expeditious administrative review of all Contract claims or Procurement controversies both before the Purchasing Agency and through an appeal are set forth in this Article.

MC1-902 DEBARMENT AND SUSPENSION OF CONTRACTORS

- A. The County Manager, at the recommendation of staff, for cause, may suspend and/or debar any Person from consideration for Award of a Contract pursuant to this Code. The Suspension may not exceed more than six months and a Debarment may not exceed more than three years for each offense.
- B. The causes for Debarment or Suspension shall include, but are not limited to, the following:
 - 1. Conviction of any Person or any subsidiary or affiliate of any Person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract.
 - 2. Conviction of any Person or any subsidiary or affiliate of any Person under any statute of the Federal government, this State or its political subdivision or any other State for:
 - a. Embezzlement
 - b. Theft
 - c. Fraudulent schemes and practices
 - d. Bid rigging
 - e. Perjury
 - f. Forgery
 - g. Bribery
 - h. Falsification or destruction of records
 - i. Receiving stolen property
 - j. Any other offense indicating a lack of business integrity or business honesty, which affects responsibility as a Contractor.
 - 3. Conviction or civil judgment finding a violation by any Person or any subsidiary or affiliate of any Person under State or Federal Antitrust Statutes.
 - 4. Violations of Contract provisions of a character which are deemed to be so


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serious as to justify Debarment or Suspension, such as either of the following:

- a. Knowingly fails without good cause to perform in accordance with the Specifications or within the time limits provided in the Contract.
 - b. Failure to perform or unsatisfactory performance in accordance with the terms of the Contract, except that failure to perform or unsatisfactory performance caused by the acts beyond the control of the Contractor shall not be considered to be a basis for Debarment or Suspension.
5. Any other cause deemed to affect responsibility as a Maricopa County Contractor, including Suspension or Debarment of such Contractor or any subsidiary or affiliate of such Contractor by another governmental entity.
- C. An administrative review shall be held by the County Manager or designee on any Person considered for Debarment or Suspension. A written notice to the Person considered for Debarment or Suspension shall be mailed at least 10 working Days prior to the administrative review and shall at the minimum include:
- 1. Date, time and place of the administrative review;
 - 2. Statement of reasons for the recommended action; and
 - 3. A statement to the Person that they may attend and offer information on their behalf.
- D. After a decision has been determined, a written notice shall be sent to the Person citing the:
- 1. Action taken and the effective date and length of time the action shall be in effect.
 - 2. Reasons for the action taken.

MC1-903 JUDICIAL REVIEW

The final decision of the County Manager or designee regarding Debarment or Suspension may be the subject of judicial review which shall be filed with the Superior Court in Maricopa County.


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MC1-904 VIOLATION; CLASSIFICATION; LIABILITY; ENFORCEMENT AUTHORITY


- A. A Person who Contracts for or purchases any ICommodity, Services or Construction without approval of the Board of Supervisors or in a manner contrary to the requirements of this Code or the Arizona Revised Statutes may be personally liable for the recovery of all public monies paid plus twenty percent of such amount and legal interest from the date of payment and all costs and damages arising out of the violation. (A.R.S. 41-2616)
- B. A Person who intentionally or knowingly Contracts for or purchases any Commodity, Services or Construction pursuant to a scheme or artifice to avoid the requirements of this Code is guilty of a Class 4 felony.
- C. The Maricopa County Attorney on behalf of Maricopa County shall enforce the provisions of this Code.

MC1-905 PROTEST AND APPEALS OF CONTRACT AWARDS

- A. Filing
 - 1. Protests are to be Filed with the Procurement Officer issuing the Solicitation or Contract. A written decision will be made within fourteen (14) Days after the protest has been filed. The decision shall contain an explanation of the basis of the decision.
 - 2. Appeals are to be Filed with Procurement Officer's respective department director within seven (7) Days from receipt of the Procurement Officer's decision. A written decision will be made within fourteen (14) Days after the appeal has been filed. The decision shall contain an explanation of the basis of the decision and shall be the County's final determination.
- B. Time for filing protests, appeals and review of Contract Awards:
 - 1. Protests based upon alleged improprieties in a Solicitation that are apparent before the deadline for submission of a response to the Solicitation shall be Filed before the deadline or within ten (10) Days after the protestor knows or should have known of the alleged impropriety, whichever is earlier.
 - 2. In cases where the alleged improprieties are not apparent before the deadline for submission of a response to the Solicitation, protests shall be Filed within ten (10) Days after the protestor knows or should have known the basis of the protest, and no later than the Award of the Solicitation.

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3. In all cases not covered by sections MC1-905 (B) (1) and (2), the protest shall be Filed within ten (10) Days after Contract Award.
 4. If the protester shows good cause why the above time requirements could not be met, the Procurement Officer may consider any protest that is not Filed timely.
 5. Notice of protesting action shall be given to the successful Contractor if the Award has been made or, if no Award has been made, to the recommended Contractor.
 6. If the protest is Filed before the Award of Contract, the Award shall be stayed unless a Written Determination is made that the Award of the Contract without delay is necessary to protect a substantial interest of Maricopa County.
 7. The time limit for decisions set forth herein may be extended not to exceed thirty (30) Days without consent of the protester. The protestor shall be notified in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
 8. The decision shall be furnished to the protestor or appellant by certified mail, return receipt requested or by any other method that provides evidence of receipt.
- C. The following administrative process details the procedure to be followed for protests and appeals of Contract Awards. Any participating Respondent or Contractor may protest the proposed Award or the Award of a Maricopa County Contract or any dispute related to their Contract. The content of the protest, appeal or dispute shall be in writing and shall include the following information:
1. The name, address and telephone number of the protestor;
 2. The signature of the protestor or their representative;
 3. Identification of the Purchasing Agency and the Solicitation or Contract number;
 4. A detailed statement of the legal and/or factual grounds including copies of relevant documents; and
 5. The form of relief requested.


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D. Remedies

1. Appropriate remedies may include one or more of the following:
 - a. Terminate the Contract;
 - b. Reject and reissue the Solicitation;
 - c. Issue a new Solicitation;
 - d. Award a Contract consistent with this Code;
 - e. Decline to exercise an option to renew under the Contract,
 - f. Amend the Solicitation; or
 - e. Such other relief as is determined necessary.

MC1-906 CONTRACT DISPUTES

- A. Except as may otherwise be provided for by law, or otherwise specifically agreed to by the Contracting parties, any dispute not involving a question of law arising during Contract performance that is not resolved between the parties within a reasonable time shall be submitted to the following Maricopa County's Contract disputes process:
1. Disputes must be Filed with the Contract administrator administering the Contract, if one has been appointed, or if not, with the Procurement Officer, within ten (10) Days from the date the Contractor knew or should have known the basis of the dispute.
 2. The Contract administrator or Procurement Officer as applicable shall respond in writing to the dispute within fourteen (14) Days.
 3. The Contractor may abide by the decision or may appeal the decision to the applicable director within seven (7) Days.

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MC1-1001 APPLICABILITY

Cooperative Purchasing agreements entered into pursuant to Article 10 of this Code shall be limited to the areas of Procurement, warehousing or management of materials.


MC1-1002 PROCUREMENT AGREEMENT APPROVAL

All Cooperative Purchasing agreements entered into pursuant to Article 10 of this Code by Maricopa County shall be approved by the Board of Supervisors.

MC1-1003 COOPERATIVE PURCHASING AUTHORIZED

Any Public Procurement Unit may either participate in, sponsor, conduct or administer a Cooperative Purchasing agreement for the Procurement of any Materials, Services, Professional Services, Construction or Construction Services with one or more other Public Procurement Units or External Procurement Entities in accordance with an agreement entered into between the participants. Cooperative Purchasing may include joint or multi-party contracts between Public Procurement Units and open-ended Public Procurement Unit Contracts that shall be available to other Public Procurement Units. A Public Educational or Public Health Institution may enter into an agreement pursuant to this section if one or more of the parties involved is a Public Procurement Unit. Parties under a Cooperative Purchasing agreement may:

1. Sponsor, conduct or administer a cooperative agreement for the Procurement of any Materials, Services, Professional Services, Construction or Construction Services.
2. Cooperatively use Contracts for Materials, Services, Professional Services, Construction or Construction Services.
3. Commonly use or share warehousing facilities, capital equipment and other facilities.
4. Provide personnel, except that the requesting Public Procurement Unit shall pay the Public Procurement Unit providing the personnel the direct and indirect Cost of providing the personnel, in accordance with the agreement.
5. On request, make available to other 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

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reasonable and necessary Costs of providing such Services.

6. Pursuant to procedures for Cooperative Purchasing adopted by the Chief Procurement Officer, Materials, Services, Professional Services, Construction and Construction Services purchased under the terms of a Contract between a Contractor and a Public Procurement Unit or external Procurement entity without complying with the requirements of MC1-315 through 324, MC1-325 through 327, MC1-328 through 339, MC1-340 through 345, MC1-374 through 379, and MC1-503 or as otherwise provided in this Code.
7. The activities described in Paragraphs 1 through 6 above do not limit what parties may do under a Cooperative Purchasing agreement.

MC1-1004 COOPERATIVE STATE PURCHASING AGREEMENT IN FORM OF A STATE REQUIREMENTS CONTRACT


Any State requirement Contract with the Maricopa County Office of Procurement Services entered into pursuant to A.R.S. § 41-2632 shall provide that:

- A. Payment for Materials or Services and inspection and acceptance of Materials or Services ordered by Maricopa County under State Contracts shall be the exclusive obligation of Maricopa County;
- B. The exercise of any rights or remedies by Maricopa County shall be the exclusive obligation of Maricopa County;
- C. Failure of Maricopa County to secure performance from the Contractor in accordance with the terms and conditions of its purchase order does not necessarily require the State to exercise its own rights or remedies; and
- D. Maricopa County shall not use a State Contract as a method for obtaining additional concessions or reduced Prices for similar Material or Services.

MC1-1005 INFORMATIONAL AND TECHNICAL SERVICES

The State Purchasing Administrator has the responsibility to develop, maintain and distribute a list of such information and technical Services available from the State Purchasing Office. Such list contains the names of any Suspended or Debarred Contractors and is distributed to the Maricopa County Office of Procurement Services.

MC1-1006 USE OF PAYMENTS RECEIVED BY A SUPPLYING PUBLIC PROCUREMENT UNIT

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All payments received by a Public Procurement Unit supplying personnel or Services shall be available to the supplying Public Procurement Unit to defray the Cost of the cooperative program.

MC1-1007 CONTRACT CONTROVERSIES

- A. Under a Cooperative Purchasing agreement in which Maricopa County is a party, controversies arising between an administering Public Procurement Unit and its Respondents or Contractors shall be resolved in accordance with Article 9 of this Code.


- B. Any local Public Procurement Unit which is not subject to Article 9 of this Code may enter into an agreement with a Public Procurement Unit to establish procedures or use such units existing procedures to resolve controversies with Contractors, whether or not such controversy arose from a Cooperative Purchasing agreement.

MC1-1008 COMPLIANCE WITH FEDERAL PROCUREMENT

If a Procurement involves the expenditure of Federal assistance or Contract monies, the Chief Procurement Officer or Using Agency shall comply with Federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Code.

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SUBJECT		ETHICS IN PUBLIC CONTRACTING	

MC1-1201 EMPLOYEE ETHICS

- A. Maricopa County employment is a public trust. It is the policy of Maricopa County for Employees to maintain high standards of honesty, integrity, impartiality, courtesy and conduct. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering County service. Further guidance can be obtained by referring to the Maricopa County Ethics Handbook.
- B. Maricopa County Employees must discharge their duties impartially so as to assure fair competitive access to governmental Procurement by responsible Contractors and to avoid the appearance of impropriety. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of Maricopa County's Procurement operation.
- C. To achieve the purpose of this article, it is essential that those doing business with Maricopa County also observe the ethical standards prescribed herein.

MC1-1202 SIGNIFICANT PROCUREMENT ROLE


An Employee of any Maricopa County Governmental Unit, who has a Significant Procurement Role in the Procurement of Commodities, Services or Construction shall not accept an offer of employment from or have employment discussions with any Person or entity lobbying for or potentially responding to a Solicitation during a period beginning on signature of the first nondisclosure agreement pertaining to a particular Solicitation or at the time of request for a sole source Procurement or competition impracticable Procurement and ending one year after the purchased Commodities are delivered or the purchase of Services or Construction begins.

MC1-1203 INFLUENCE

- A. Any attempt to realize personal gain through Maricopa County employment by conduct inconsistent with the proper discharge of the Employee's duty is a breach of public trust.
- B. Any effort to influence any Maricopa County Employee or agent to breach the standards of ethical conduct, maybe grounds for Disbarment or Suspension under MC1-902.

MC1-1204 CONFLICT OF INTEREST

It shall be a breach of ethical standards for any Employee or agent acting on behalf of Maricopa County to directly or indirectly participate in or benefit from a Procurement when the Employee, agent or his immediate family has a financial interest in the

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Business or organization, or has a potential for financial gain as a direct result of their actions, unless an exception has been previously granted by the Chief Procurement Officer. The Chief Procurement Officer shall review requests for exceptions on a case by case basis and issue a written determination to support the decision.

MC1-1205 ETHICAL STANDARDS

- A. It shall be a breach of ethical standards for any Person to offer, give or agree to give any Employee or former Employee, or for any Employee or former Employee to solicit, demand, accept, or agree to accept from another Person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a Purchase Request, influencing content of any Specification or Procurement standard, rendering of advise, investigation, auditing or in any advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement of a Contract or subcontract, or to any Solicitation or Proposal thereof.
- B. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a Contract to the prime Contractor or higher tier subcontractor or any Person associated therewith, as an inducement for the Award of a subcontract or order.

MC-1206 CONTINGENT FEES


It shall be a breach of ethical standards for a Person to be retained, or to retain a Person, to solicit or secure a Maricopa County Contract upon an agreement or understanding for a commission, percentages, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing Business.

MC-1207 EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES

It shall be a breach of ethical standards for any Employee or former Employee who is participating directly or indirectly in the Procurement process to become, or be while such an Employee, the Employee of any Person under Contract with the governmental body by whom the employee is employed.

MC1-1208 CONFIDENTIAL INFORMATION

It shall be a breach of ethical standards for any Employee or former Employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or

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anticipated personal gain of any other Person.