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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. Summary

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 \$500,000 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 requirement 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:

- (1) Contracts for vertical Construction under Title 34 have no sunset date.
- (2) Contracts for horizontal Construction under Title 34 have a sunset date of June 30, 2025, in accordance with § 34-605.G.1.
- (3) Contracts for Construction services under Title 28 have a sunset date of December 31, 2025, in accordance with A.R.S. § 28-7367.I.3.
- (4) 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 \$10,000 or less, one written quotation is required.
 - ii. For work greater than \$10,000 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 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 that 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 information and approved

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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 process 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 \$2,000,000, 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, annually, consultants and Contractors listed on the register 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 the need to obtain a consultant is 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 MC1-353 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 Solicitations made in response to Respondent question(s) shall be transmitted to all prospective Respondents by an addendum. An addendum shall document all changes or revisions to the Solicitation and shall include at a minimum the following information:
 - 1. addendum number, title, and Solicitation number of the project; and
 - 2. indication of a revised or unchanged Bid opening date and time.
- B. Respondents acknowledgment of receipt of an addendum on Bids is required for

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the Respondent's response to be considered Responsive to the Solicitation.

- C. 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 10 percent of the amount of the Bid for Design-Bid-Build, for 10 percent of the Construction expenses in a Design-Build Proposal, or 10 percent 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 Statute 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 Statute, and the conditions and provisions of the surety Bond regarding the surety's obligations shall follow the form required by A.R.S. § 34-608, 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 R2-7-506; 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 an 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 requirements, 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, and 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, and 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 Contractor's Offer shall be rejected, its Bid security shall be forfeited, and Award of the Contract shall be made to the next lowest Responsive, Responsible Respondent.

MC1-511 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. Based on the County anticipated Construction schedule and after 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.

MC1-512 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;
 2. the Change Order is reviewed and approved by the Procurement Officer assigned to that department;
 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 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 MC1-512.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, require 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 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 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 percent of each progress payment made to Contractors until the work is 50 percent complete. After the Contract is 50 percent completed, no more than 5 percent 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 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 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 the

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consultant's 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.