

REFERENCE TITLE: **procurement code omnibus**

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2321

Introduced by
Representative Pierce J

AN ACT

**AMENDING SECTIONS 41-753, 41-1231, 41-1233.01, 41-2501, 41-2517 AND 41-2546,
ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA PROCUREMENT CODE.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-753, Arizona Revised Statutes, is amended to
3 read:

4 41-753. Unlawful acts; violation; classification

5 A. A person shall not make any false statement, certificate, mark,
6 rating or report with regard to any test, certification or appointment made
7 under this article or in any manner commit any fraud preventing the impartial
8 execution of this article or rules adopted under this article.

9 B. A person shall not, directly or indirectly, give, render, pay,
10 offer, solicit or accept any money, service or other valuable consideration
11 for or on account of any appointment, proposed appointment, promotion or
12 proposed promotion to, or any advantage in, a position in the state personnel
13 system.

14 C. An employee of any state agency, examiner or other person shall not
15 obstruct any person in the person's right to examination, eligibility,
16 certification or appointment under this article, or furnish to any person any
17 special or secret information for the purpose of affecting the rights or
18 prospects of any person with respect to employment in the state personnel
19 system.

20 D. An employee of any agency as defined in section 41-1001, including
21 the office of the governor, who has a significant role in the procurement of
22 materials, services or construction shall not accept an offer of employment
23 from or have employment discussions with any person or entity lobbying for or
24 potentially responding to a solicitation during a period beginning on
25 signature of the first nondisclosure agreement pertaining to a particular
26 solicitation or at the time of request for a sole source procurement or
27 competition impracticable procurement AND ENDING AT THE TIME OF THE CONTRACT
28 AWARD. AN EMPLOYEE OF ANY AGENCY AS DEFINED IN SECTION 41-1001, INCLUDING
29 THE OFFICE OF THE GOVERNOR, WHO HAS A SIGNIFICANT ROLE IN THE PROCUREMENT OF
30 MATERIALS, SERVICES OR CONSTRUCTION SHALL NOT ACCEPT AN OFFER OF EMPLOYMENT
31 FROM OR HAVE EMPLOYMENT DISCUSSIONS WITH THE SUCCESSFUL OFFEROR OR OFFERORS
32 AND THEIR LOBBYISTS DURING A PERIOD BEGINNING ON SIGNATURE OF THE FIRST
33 NONDISCLOSURE AGREEMENT PERTAINING TO A PARTICULAR SOLICITATION OR AT THE
34 TIME OF REQUEST FOR A SOLE SOURCE PROCUREMENT OR COMPETITION IMPRACTICABLE
35 PROCUREMENT and ending one year after the purchased materials are delivered
36 or the purchase of services or construction begins. An agency as defined in
37 section 41-1001, including the office of the governor, shall inform its
38 employees when the first nondisclosure agreement is signed on a particular
39 solicitation, and the agency shall notify the state procurement administrator
40 who shall post information regarding the date of the first nondisclosure
41 agreement pertaining to a particular procurement activity on the department
42 of administration's website.

43 E. Any person who knowingly violates subsection A, B, C or D of this
44 section is guilty of a class 2 misdemeanor.

1 F. An elected or appointed official shall not with corrupt intent use
2 the official's political influence or position to cause the firing, promotion
3 or demotion of any public employee or the hiring of or failure to hire any
4 applicant for public employment.

5 G. An elected or appointed official who knowingly and with corrupt
6 intent violates subsection F of this section is guilty of a class 2
7 misdemeanor.

8 H. Any person who is convicted of a class 2 misdemeanor under this
9 article, for a period of five years, is ineligible for appointment to or
10 employment in a position in the state personnel system and, if the person is
11 an employee of this state at the time of conviction, is subject to suspension
12 for not less than ninety days or dismissal.

13 I. A contact by an elected or appointed official with a public agency
14 regarding the qualifications of an applicant shall not be construed as
15 illegally using political influence or position.

16 Sec. 2. Section 41-1231, Arizona Revised Statutes, is amended to read:

17 41-1231. Definitions

18 In this article, unless the context otherwise requires:

19 1. "Authorized lobbyist" means any person, other than a designated
20 lobbyist or lobbyist for compensation, who is employed by, retained by or
21 representing a principal, with or without compensation, for the purpose of
22 lobbying and who is listed as an authorized lobbyist by the principal in its
23 registration pursuant to section 41-1232.

24 2. "Authorized public lobbyist" means a person, other than a
25 designated public lobbyist, who is employed by, retained by or representing a
26 public body, with or without compensation, for the purpose of lobbying and
27 who is listed as an authorized public lobbyist by the public body in its
28 registration pursuant to section 41-1232.01.

29 3. "Designated lobbyist" means the person who is designated by a
30 principal as the single point of contact for the principal and who is listed
31 as the designated lobbyist by the principal in its registration pursuant to
32 section 41-1232.

33 4. "Designated public lobbyist" means the person who is designated by
34 a public body as the single point of contact for the public body and who is
35 listed as the designated public lobbyist by the public body in its
36 registration pursuant to section 41-1232.01.

37 5. "Entertainment" means the amount of any expenditure paid or
38 incurred for admission to any sporting or cultural event or for participation
39 in any sporting or cultural activity.

40 6. "Expenditure" means a payment, distribution, loan, advance, deposit
41 or gift of money or anything of value and includes a contract, promise or
42 agreement, whether or not legally enforceable, to make an expenditure that
43 provides a benefit to an individual state officer or state employee and that
44 is incurred by or on behalf of one or more principals, public bodies,
45 lobbyists, designated public lobbyists or authorized public lobbyists.

1 7. "Family gift" means a gift to a state officer or employee or a
2 member of the officer's or employee's household from a principal, lobbyist,
3 designated public lobbyist or authorized public lobbyist who is a relative of
4 the state officer or employee or a member of the household of the state
5 officer or employee if the donor is not acting as the agent or intermediary
6 for someone other than a person covered by this paragraph.

7 8. "Food or beverage" means the amount of any expenditure paid or
8 incurred for food or beverages for a state officer or employee provided at a
9 location at which the principal, public body, lobbyist, designated public
10 lobbyist or authorized public lobbyist who made the expenditure is present.

11 9. "Gift" means a payment, distribution, expenditure, advance, deposit
12 or donation of money, any intangible personal property or any kind of
13 tangible personal or real property. For the purposes of this article, gift
14 does not include:

15 (a) A gift, devise or inheritance from an individual's spouse, child,
16 parent, grandparent, grandchild, brother, sister, parent-in-law,
17 brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or
18 the spouse of any such individual if the donor is not acting as the agent or
19 intermediary for someone other than a person covered by this subdivision.

20 (b) Expenditures that are either properly reported or exempt from
21 reporting under this chapter for:

22 (i) A speaking engagement.

23 (ii) Food or beverages.

24 (iii) Travel and lodging.

25 (iv) Flowers.

26 (c) Salary, compensation or employer-reimbursed expenses lawfully paid
27 to a public official.

28 (d) The value, cost or price of professional or consulting services
29 that are not rendered to obtain a benefit for any registered principal,
30 public body, lobbyist, designated public lobbyist or authorized public
31 lobbyist or the clients of a principal or lobbyist.

32 (e) Expenses relating to a special event or function to which all
33 members of the legislature, either house of the legislature or any committee
34 of the legislature ~~are~~ IS invited.

35 (f) A plaque or other form of recognition similar to a plaque to a
36 state officer or state employee to signify the honorary recognition of a
37 service or other notable accomplishment.

38 (g) Informational material such as books, reports, pamphlets,
39 calendars or periodicals.

40 (h) An item that is not used and that is returned within fifteen days
41 of receipt to the donor or that is delivered within fifteen days of receipt
42 to a charitable organization and that is not claimed as a charitable
43 contribution for state or federal income tax purposes.

44 (i) A campaign contribution that is properly received and reported as
45 required by law.

1 (j) An item that is given to a state officer or employee if the state
2 officer or employee gives an item of approximately the same value to the
3 giver of the item at the same time that the item is given or on a similar
4 occasion as the one that prompted the original item to be given.

5 (k) Gifts of a personal nature that were customarily received by an
6 individual from the donor before the individual became a state officer or
7 employee.

8 (l) An item that is given to the general public at an event.

9 10. "Legislation" means bills, resolutions, memorials, amendments,
10 nominations and other matters that are pending or proposed in either house of
11 the legislature of this state.

12 11. "Lobbying":

13 (a) Means attempting to influence the passage or defeat of any
14 legislation by directly communicating with any legislator or attempting to
15 influence any formal ~~rule-making~~ RULEMAKING proceeding pursuant to chapter 6
16 of this title or ~~rule-making~~ RULEMAKING proceedings that are exempt from
17 chapter 6 of this title by directly communicating with any state officer or
18 employee.

19 (b) Includes, for a person who is otherwise required to be registered
20 as a lobbyist for compensation pursuant to this article, attempting to
21 influence the procurement of materials, services or construction by an agency
22 as defined in section 41-1001, including the office of the governor.

23 (c) Does not include:

24 (i) Interagency communications between state agency employees.

25 (ii) Communications between a public official or employee of a public
26 body, designated public lobbyist or authorized public lobbyist and any state
27 officer, except for a member of the legislature, or an employee of the
28 legislature.

29 (iii) Oral questions or comments made by a person to a state officer
30 or employee regarding a proposed rule and made in public at a meeting or
31 workshop that is open to the public and that is sponsored by a state agency,
32 board, commission, council or office.

33 (iv) Communications between a public body and a self-employed person
34 or person employed by a partnership or company regarding the procurement of
35 materials, services or construction unless the self-employed person or person
36 employed by a partnership or company is otherwise required to register
37 pursuant to this article or is employed by, supervised by at any level or
38 contracted ~~with~~ BY a person who is otherwise required to register AS A
39 LOBBYIST pursuant to this article.

40 12. "Lobbyist" means any person, other than a designated public
41 lobbyist or authorized public lobbyist, who is employed by, retained by or
42 representing a person other than himself, with or without compensation, for
43 the purpose of lobbying and who is listed as a lobbyist by the principal in
44 its registration pursuant to section 41-1232. Lobbyist includes a lobbyist
45 for compensation, designated lobbyist and authorized lobbyist.

1 13. "Lobbyist for compensation" means a lobbyist who is compensated for
2 the primary purpose of lobbying on behalf of a principal and who is listed by
3 the principal in its registration pursuant to section 41-1232.

4 14. "Person" means an individual, partnership, committee, association
5 or corporation and any other organization or group of persons, except
6 legislators and political parties qualified for representation on the ballot
7 pursuant to section 16-801 or 16-804.

8 15. "Personal hospitality" means hospitality, meals, beverages,
9 transportation or lodging furnished but not commercially provided by a person
10 on property or facilities owned or possessed by the person or the person's
11 family.

12 16. "Principal" means any person, other than a public body, that
13 employs, retains, engages or uses, with or without compensation, a lobbyist.
14 Principal includes any subsidiary of a corporation.

15 17. "Procurement" has the same meaning prescribed in section 41-2503.

16 18. "Public body" means the Arizona board of regents, a university
17 under the jurisdiction of the Arizona board of regents, the judicial
18 department, any state agency, board, commission or council, any county, any
19 county elected officer who elects to appoint a designated public lobbyist or
20 any city, town, district or other political subdivision of this state that
21 receives and uses tax revenues and that employs, retains, engages or uses,
22 with or without compensation, a designated public lobbyist or authorized
23 public lobbyist.

24 19. "Public official" means a person who is duly elected, appointed or
25 retained through election to an elected state, county or local office.

26 20. "Single expenditure" means an expenditure that provides a benefit
27 of more than twenty dollars to an individual state officer or state employee
28 and that is incurred by or on behalf of one or more principals, public
29 bodies, lobbyists, designated public lobbyists or authorized public
30 lobbyists.

31 21. "Speaking engagement":

32 (a) Means the amount of any expense paid or incurred for entrance
33 fees, lodging, food and beverage, entertainment, travel and other expenses
34 for the state officer's or employee's attendance at an event, committee,
35 meeting, conference or seminar, including meetings of state, regional or
36 national organizations or their committees concerned with legislative or
37 governmental activities if the state officer or employee participates in the
38 event as a speaker or panel participant by presenting information relating to
39 the state officer's or employee's legislative or official duties or by
40 performing a ceremonial function appropriate to the state officer's or
41 employee's position.

42 (b) Does not include expenditures for an honorarium or any other
43 similar fee paid to a speaker.

1 22. "State employee" means an employee of the legislature, a university
2 under the jurisdiction of the Arizona board of regents, the judicial
3 department or a state office, agency, board, commission or council.

4 23. "State officer" means a person who is duly elected, appointed or
5 retained through election to any state office, or a member of any state
6 board, commission or council, and includes a member of the legislature.

7 Sec. 3. Section 41-1233.01, Arizona Revised Statutes, is amended to
8 read:

9 41-1233.01. Disclosure

10 A person who is registered pursuant to this article or who is a
11 designated lobbyist, lobbyist for compensation, authorized lobbyist,
12 designated public lobbyist or authorized public lobbyist shall disclose that
13 fact to:

14 1. Any legislator the person is lobbying for the first time or on any
15 subsequent request of a legislator.

16 2. Any public official or employee of a public body EACH TIME that the
17 person is lobbying for the procurement of materials, services or
18 construction. THE PERSON ALSO SHALL DISCLOSE THE NAME OF THAT PERSON'S
19 CLIENT.

20 Sec. 4. Section 41-2501, Arizona Revised Statutes, is amended to read:

21 41-2501. Applicability

22 A. This chapter applies only to procurements initiated after
23 January 1, 1985 unless the parties agree to its application to procurements
24 initiated before that date.

25 B. This chapter applies to every expenditure of public monies,
26 including federal assistance monies except as otherwise specified in section
27 41-2637, by this state, acting through a state governmental unit as defined
28 in this chapter, under any contract, except that this chapter does not apply
29 to either grants as defined in this chapter, or contracts between this state
30 and its political subdivisions or other governments, except as provided in
31 chapter 24 of this title and in article 10 of this chapter. This chapter
32 also applies to the disposal of state materials. This chapter and rules
33 adopted under this chapter do not prevent any state governmental unit or
34 political subdivision from complying with the terms of any grant, gift,
35 bequest or cooperative agreement.

36 C. All political subdivisions and other local public agencies of this
37 state may adopt all or any part of this chapter and the rules adopted
38 pursuant to this chapter.

39 D. Notwithstanding any other law, ~~section~~ SECTIONS 41-2517 ~~applies~~ AND
40 41-2546 APPLY to any agency as defined in section 41-1001, including the
41 office of the governor.

42 E. The Arizona board of regents and the legislative and judicial
43 branches of state government are not subject to this chapter except as
44 prescribed in subsection F of this section.

1 F. The Arizona board of regents and the judicial branch shall adopt
2 rules prescribing procurement policies and procedures for themselves and
3 institutions under their jurisdiction. The rules must be substantially
4 equivalent to the policies and procedures prescribed in this chapter.

5 G. The Arizona state lottery commission is exempt from this chapter
6 for procurement relating to the design and operation of the lottery or
7 purchase of lottery equipment, tickets and related materials. The executive
8 director of the Arizona state lottery commission shall adopt rules
9 substantially equivalent to the policies and procedures in this chapter for
10 procurement relating to the design and operation of the lottery or purchase
11 of lottery equipment, tickets or related materials. All other procurement
12 shall be as prescribed by this chapter.

13 H. The Arizona health care cost containment system administration is
14 exempt from this chapter for provider contracts pursuant to section 36-2904,
15 subsection A and contracts for goods and services, including program
16 contractor contracts pursuant to title 36, chapter 29, articles 2 and 3. All
17 other procurement, including contracts for the statewide administrator of the
18 program pursuant to section 36-2903, subsection B, shall be as prescribed by
19 this chapter.

20 I. Arizona industries for the blind is exempt from this chapter for
21 purchases of finished goods from members of national industries for the blind
22 and for purchases of raw materials for use in the manufacture of products for
23 sale pursuant to section 41-1972. All other procurement shall be as
24 prescribed by this chapter.

25 J. Arizona correctional industries is exempt from this chapter for
26 purchases of raw materials, components and supplies that are used in the
27 manufacture or production of goods or services for sale entered into pursuant
28 to section 41-1622. All other procurement shall be as prescribed by this
29 chapter.

30 K. The state transportation board and the director of the department
31 of transportation are exempt from this chapter other than section 41-2586 for
32 the procurement of construction or reconstruction, including engineering
33 services, of transportation facilities or highway facilities and any other
34 services that are directly related to land titles, appraisals, real property
35 acquisition, relocation, property management or building facility design and
36 construction for highway development and that are required pursuant to title
37 28, chapter 20.

38 L. The Arizona highways magazine is exempt from this chapter for
39 contracts for the production, promotion, distribution and sale of the
40 magazine and related products and for contracts for sole source creative
41 works entered into pursuant to section 28-7314, subsection A, paragraph 5.
42 All other procurement shall be as prescribed by this chapter.

43 M. The secretary of state is exempt from this chapter for contracts
44 entered into pursuant to section 41-1012 to publish and sell the

1 administrative code. All other procurement shall be as prescribed by this
2 chapter.

3 N. This chapter is not applicable to contracts for professional
4 witnesses if the purpose of such contracts is to provide for professional
5 services or testimony relating to an existing or probable judicial proceeding
6 in which this state is or may become a party or to contract for special
7 investigative services for law enforcement purposes.

8 O. The head of any state governmental unit, in relation to any
9 contract exempted by this section from this chapter, has the same authority
10 to adopt rules, procedures or policies as is delegated to the director
11 pursuant to this chapter.

12 P. Agreements negotiated by legal counsel representing this state in
13 settlement of litigation or threatened litigation are exempt from this
14 chapter.

15 Q. This chapter is not applicable to contracts entered into by the
16 department of economic security:

17 1. With a provider licensed or certified by an agency of this state to
18 provide child day care services or with a provider of family foster care
19 pursuant to section 8-503 or 36-554.

20 2. With area agencies on aging created pursuant to the older Americans
21 act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001
22 through ~~3058ee~~ 3058ff).

23 3. For services pursuant to title 36, chapter 29, article 2.

24 4. With an eligible entity as defined by Public Law 105-285, section
25 673(1)(a)(i), as amended, for designated community services block grant
26 program monies and any other monies given to the eligible entity that
27 accomplishes the purpose of Public Law 105-285, section 672.

28 R. The department of health services may not require that persons with
29 whom it contracts follow this chapter for the purposes of subcontracts
30 entered into for the provision of the following:

31 1. Mental health services pursuant to section 36-189, subsection B.

32 2. Services for the seriously mentally ill pursuant to title 36,
33 chapter 5, article 10.

34 3. Drug and alcohol services pursuant to section 36-141.

35 4. Domestic violence services pursuant to title 36, chapter 30,
36 article 1.

37 S. The department of health services is exempt from this chapter for
38 contracts for services of physicians at the Arizona state hospital.

39 T. Contracts for goods and services approved by the board of trustees
40 of the public safety personnel retirement system are exempt from this
41 chapter.

42 U. The Arizona department of agriculture is exempt from this chapter
43 with respect to contracts for private labor and equipment to effect cotton or
44 cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2,
45 article 1.

1 V. The Arizona state parks board is exempt from this chapter for
2 purchases of guest supplies and items for resale such as food, linens, gift
3 items, sundries, furniture, china, glassware and utensils for the facilities
4 located in the Tonto natural bridge state park.

5 W. The Arizona state parks board is exempt from this chapter for the
6 purchase, production, promotion, distribution and sale of publications,
7 souvenirs and sundry items obtained and produced for resale.

8 X. The Arizona state schools for the deaf and the blind are exempt
9 from this chapter for the purchase of textbooks and when purchasing products
10 through a cooperative that is organized and operates in accordance with state
11 law if such products are not available on a statewide contract and are
12 related to the operation of the schools or are products for which special
13 discounts are offered for educational institutions.

14 Y. Expenditures of monies in the morale, welfare and recreational fund
15 established by section 26-153 are exempt from this chapter.

16 Z. Notwithstanding section 41-2534, the director of the state
17 department of corrections may contract with local medical providers in
18 counties with a population of less than four hundred thousand persons
19 ~~according to the most recent United States decennial census~~ for the following
20 purposes:

21 1. To acquire hospital and professional medical services for inmates
22 who are incarcerated in state department of corrections facilities that are
23 located in those counties.

24 2. To ensure the availability of emergency medical services to inmates
25 in all counties by contracting with the closest medical facility that offers
26 emergency treatment and stabilization.

27 AA. The department of environmental quality is exempt from this
28 chapter for contracting for procurements relating to the water quality
29 assurance revolving fund program established pursuant to title 49, chapter 2,
30 article 5. The department shall engage in a source selection process that is
31 similar to the procedures prescribed by this chapter. The department may
32 contract for remedial actions with a single selection process. The exclusive
33 remedy for disputes or claims relating to contracting pursuant to this
34 subsection is as prescribed by article 9 of this chapter and the rules
35 adopted pursuant to that article. All other procurement by the department
36 shall be as prescribed by this chapter.

37 BB. The motor vehicle division of the department of transportation is
38 exempt from this chapter for third-party authorizations pursuant to title 28,
39 chapter 13, only if all of the following conditions exist:

40 1. The division does not pay any public monies to an authorized third
41 party.

42 2. Exclusivity is not granted to an authorized third party.

43 3. The director has complied with the requirements prescribed in title
44 28, chapter 13 in selecting an authorized third party.

1 CC. This section does not exempt third-party authorizations pursuant
2 to title 28, chapter 13 from any other applicable law.

3 DD. The state forester is exempt from this chapter for purchases and
4 contracts relating to wildland fire suppression and pre-positioning equipment
5 resources and for other activities related to combating wildland fires and
6 other unplanned risk activities, including fire, flood, earthquake, wind and
7 hazardous material responses. All other procurement by the state forester
8 shall be as prescribed by this chapter.

9 EE. The cotton research and protection council is exempt from this
10 chapter for procurements.

11 FF. Expenditures of monies in the Arizona agricultural protection fund
12 established by section 3-3304 are exempt from this chapter.

13 GG. The Arizona commerce authority is exempt from this chapter, except
14 article 10 for the purpose of cooperative purchases. The authority shall
15 adopt policies, procedures and practices, in consultation with the department
16 of administration, that are similar to and based on the policies and
17 procedures prescribed by this chapter for the purpose of increased public
18 confidence, fair and equitable treatment of all persons engaged in the
19 process and fostering broad competition while accomplishing flexibility to
20 achieve the authority's statutory requirements. The authority shall make its
21 policies, procedures and practices available to the public. The authority
22 may exempt specific expenditures from the policies, procedures and practices.

23 HH. The Arizona exposition and state fair board is exempt from this
24 chapter for contracts for professional entertainment.

25 II. This chapter does not apply to the purchase of water, gas or
26 electric utilities.

27 JJ. This chapter does not apply to professional certifications,
28 professional memberships and conference registrations.

29 KK. THE DEPARTMENT OF GAMING IS EXEMPT FROM THIS CHAPTER FOR PROBLEM
30 GAMBLING TREATMENT SERVICES CONTRACTS WITH LICENSED BEHAVIORAL HEALTH
31 PROFESSIONALS.

32 LL. THIS CHAPTER DOES NOT APPLY TO CONTRACTS FOR CREDIT REPORTING
33 SERVICES.

34 Sec. 5. Section 41-2517, Arizona Revised Statutes, is amended to read:
35 41-2517. Procurement officers and procurement employees:
36 violation; classification

37 A. It is unlawful for a procurement officer or an employee having a
38 significant procurement role to accept any position or have employment
39 discussions with a person or firm lobbying or potentially responding to the
40 solicitation beginning on signature of the first nondisclosure agreement
41 pertaining to a particular solicitation or at the time of request for a sole
42 source procurement or competition impracticable procurement AND ENDING AT THE
43 TIME OF CONTRACT AWARD. IT IS UNLAWFUL FOR A PROCUREMENT OFFICER OR AN
44 EMPLOYEE HAVING A SIGNIFICANT PROCUREMENT ROLE TO ACCEPT ANY POSITION OR HAVE
45 EMPLOYMENT DISCUSSIONS WITH THE SUCCESSFUL OFFEROR OR OFFERORS AND THEIR

1 LOBBYISTS BEGINNING ON SIGNATURE OF THE FIRST NONDISCLOSURE AGREEMENT
2 PERTAINING TO A PARTICULAR SOLICITATION OR AT THE TIME OF REQUEST FOR A SOLE
3 SOURCE PROCUREMENT OR COMPETITION IMPRACTICABLE PROCUREMENT and ending one
4 year after the purchased materials are delivered or the purchase of services
5 or construction begins, if the procurement officer or employee had a
6 significant procurement role in the particular procurement.

7 B. It is unlawful for a procurement officer or an employee having a
8 significant procurement role to solicit an employment opportunity, regardless
9 of who would receive such an opportunity, from any person or firm lobbying or
10 potentially responding to a solicitation for the procurement of materials,
11 services or construction beginning on signature of the first nondisclosure
12 agreement pertaining to a particular solicitation or at the time of request
13 for a sole source procurement or competition impracticable procurement AND
14 ENDING AT THE TIME OF CONTRACT AWARD. IT IS UNLAWFUL FOR A PROCUREMENT
15 OFFICER OR AN EMPLOYEE HAVING A SIGNIFICANT PROCUREMENT ROLE TO SOLICIT AN
16 EMPLOYMENT OPPORTUNITY, REGARDLESS OF WHO WOULD RECEIVE SUCH AN OPPORTUNITY,
17 FROM THE SUCCESSFUL OFFEROR OR OFFERORS AND THEIR LOBBYISTS BEGINNING ON
18 SIGNATURE OF THE FIRST NONDISCLOSURE AGREEMENT PERTAINING TO A PARTICULAR
19 SOLICITATION OR AT THE TIME OF REQUEST FOR A SOLE SOURCE PROCUREMENT OR
20 COMPETITION IMPRACTICABLE PROCUREMENT and ending one year after the purchased
21 materials are delivered or the purchase of services or construction begins,
22 if the procurement officer or employee had a significant role in the
23 particular procurement.

24 C. It is unlawful for a person or firm lobbying or potentially
25 responding to a solicitation for the procurement of materials, services or
26 construction to offer employment to a procurement officer, a procurement
27 employee or an employee having a significant procurement role beginning on
28 signature of the first nondisclosure agreement pertaining to a particular
29 solicitation or at the time of request for a sole source procurement or
30 competition impracticable procurement AND ENDING AT THE TIME OF CONTRACT
31 AWARD. IT IS UNLAWFUL FOR THE SUCCESSFUL OFFEROR OR OFFERORS AND THEIR
32 LOBBYISTS TO OFFER EMPLOYMENT TO A PROCUREMENT OFFICER, A PROCUREMENT
33 EMPLOYEE OR AN EMPLOYEE HAVING A SIGNIFICANT PROCUREMENT ROLE BEGINNING ON
34 SIGNATURE OF THE FIRST NONDISCLOSURE AGREEMENT PERTAINING TO A PARTICULAR
35 SOLICITATION OR AT THE TIME OF REQUEST FOR A SOLE SOURCE PROCUREMENT OR
36 COMPETITION IMPRACTICABLE PROCUREMENT and ending one year after the purchased
37 materials are delivered or the purchase of services or construction begins,
38 if the procurement officer or employee had a significant role in the
39 particular procurement.

40 D. In response to a written request from an employee seeking
41 clarification on whether the employee has played a significant role in a
42 procurement, the director shall issue a determination in writing within
43 fifteen days after receiving the request. The director may make a
44 determination in writing that this section and section 41-753, subsection D
45 do not apply if a particular solicitation, sole source procurement or

1 competition impracticable procurement has been canceled or is associated with
2 the privatization of existing state services that would result in the
3 elimination of the position in state service of an employee with a
4 significant procurement role. The director may delegate the authority to
5 make determinations pursuant to this subsection to a director of a state
6 agency. An agency director or agency deputy director may request a
7 determination from the office of the governor regarding whether the agency
8 director or agency deputy director played a significant role in a particular
9 procurement for the purposes of the one-year employment restriction, and the
10 office of the governor shall make a determination within thirty days after
11 the receipt of the written request.

12 E. It is unlawful for a procurement officer or an employee who was
13 previously employed by a person or firm responding to a solicitation to serve
14 in a significant procurement role for a period of one year following the
15 person's previous employment.

16 F. On signature of a nondisclosure agreement pertaining to a
17 particular solicitation, or at the time of a request for a sole source or
18 competition impracticable procurement, a procurement officer or an employee
19 having a significant role in the procurement shall provide written disclosure
20 of any financial interest the officer or employee, or the spouse of the
21 officer or employee, may hold.

22 G. A person who knowingly violates this section is guilty of a class 2
23 misdemeanor. On conviction the person is ineligible for appointment to or
24 employment in a position in the state personnel system for a period of five
25 years and, if the person is an employee of this state at the time of
26 conviction, is subject to suspension for not less than ninety days or
27 dismissal.

28 Sec. 6. Section 41-2546, Arizona Revised Statutes, is amended to read:
29 41-2546. Multiterm contracts

30 A. Unless otherwise provided by law, a contract for materials or
31 services may be entered into for a period of time up to five years and a
32 contract for job-order-contracting construction services may also be entered
33 into for a period of time up to five years, as deemed to be in the best
34 interest of this state, if the term of the contract and conditions of renewal
35 or extension, if any, are included in the solicitation and monies are
36 available for the first fiscal period at the time of contracting.
37 **NOTWITHSTANDING ANY OTHER LAW, a contract, INCLUDING CONTRACTS NOT OTHERWISE**
38 **SUBJECT TO THIS CHAPTER,** may be entered into for materials or services for a
39 period of time exceeding five years if, under rules adopted pursuant to this
40 chapter, the director determines in writing that such a contract would be
41 advantageous to this state. Payment and performance obligations for
42 succeeding fiscal periods are subject to the availability and appropriation
43 of monies.

44 B. Before the use of a multiterm contract, it shall be determined in
45 writing that:

1 1. Estimated requirements cover the period of the contract and are
2 reasonable and continuing.
3 2. Such a contract will serve the best interests of this state by
4 encouraging effective competition or otherwise promoting economies in state
5 procurement.
6 C. If monies are not appropriated or otherwise made available to
7 support continuation of performance in a subsequent fiscal period, the
8 contract shall be cancelled and the contractor may only be reimbursed for the
9 reasonable value of any nonrecurring costs incurred but not amortized in the
10 price of the materials or services delivered under the contract or which are
11 otherwise not recoverable. The cost of cancellation may be paid from any
12 appropriations available for such purposes.