CHAPTER 31

SENATE BILL 1136

AN ACT

AMENDING SECTIONS 5-559, 15-213, 28-6924, 34-221, 34-609, 41-2501 AND 41-2577, ARIZONA REVISED STATUTES; RELATING TO PUBLIC CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 5-559, Arizona Revised Statutes, is amended to read:

5-559. Contracts; limitation; restrictions
A. Notwithstanding any other statute, the director may:
   1. Directly solicit bids and contract for the design and operation of the lottery or the purchase of lottery equipment, tickets and related materials.
   2. Contract to effectuate the purposes of this chapter and the rules adopted pursuant to this chapter.
   3. Acquire administrative office facilities and related facilities and equipment for the use of the commission by lease, purchase or lease-purchase.
B. Procurement pursuant to this section shall be performed as prescribed in section 41-2501, subsection G. Bids received under this section may be deemed confidential in whole or in part by the director if required on account of the sensitive and responsible nature of the commission's functions and the paramount considerations of security and integrity.
C. Any award made by the director pursuant to this section becomes effective and binding on the commission unless it is rejected by the commission at a meeting held within fourteen calendar days after the award is communicated to the members of the commission.
D. A contract awarded or entered into by the director pursuant to this section shall not be assigned by the holder except by specific approval of the director. In all awards of contracts pursuant to this section, the director shall take particular account of the sensitive and responsible nature of the commission's functions and the paramount considerations of security and integrity.

Sec. 2. Section 15-213, Arizona Revised Statutes, is amended to read:

15-213. Procurement practices of school districts and charter schools; violations; classification; definitions
A. The state board of education shall adopt rules prescribing procurement practices for all school districts in this state as follows:
   1. The state board shall submit to the auditor general proposed rules consistent with the procurement practices prescribed in title 41, chapter 23, modifying the provisions for public notice of invitation for bids, requests for proposals and requests for qualifications to allow a governing board to give public notice of the invitation for bids, requests for proposals and requests for qualifications by publication in the official newspaper of the county as prescribed in section 11-255, modifying the provisions relating to disposal of materials to comply with section 15-342, paragraph 18, providing for governing board delegation of procurement authority and modifying as necessary other provisions that the
state board determines are not appropriate for school districts. The rules shall include provisions specifying that school districts are not required to engage in competitive bidding in order to make the decision to participate in programs pursuant to section 15-382 and that a program authorized by section 15-382 is not required to engage in competitive bidding for the services necessary to administer the program or for purchase of insurance or reinsurance. The rules shall include provisions specifying that school districts are not required to engage in competitive bidding in order to place a pupil in a private school that provides special education services if such a placement is prescribed in the pupil's individualized education program and the private school has been approved by the department of education division of special education pursuant to section 15-765, subsection D. This placement is not subject to rules adopted by the state board of education before November 24, 2009 pursuant to this section. The rules for procurement of construction projects shall include provisions specifying that surety bonds furnished as bid security and performance and payment bonds shall be executed and furnished as required by title 34, chapter 2 or 6, as applicable. The rules shall specify the total cost of a procurement that is subject to invitations for bids, requests for proposals and requests for clarification, using the aggregate dollar amount limits for procurements prescribed in section 41-2535. THE RULES MUST FOLLOW THE PROMPT PAYMENT REQUIREMENTS PRESCRIBED IN SECTIONS 41-2576 AND 41-2577 EXCEPT FOR EXTERNAL FUNDING THAT HAS NOT YET BEEN RECEIVED.

2. The state board of education shall adopt rules for procurements involving construction not exceeding $150,000, which shall be known as the simplified school construction procurement program. At a minimum, the rules for a simplified construction procurement program shall require:

(a) Each county school superintendent maintain a list of persons who desire to receive solicitations to bid on construction projects to which additions shall be permitted ALLOWED throughout the year.

(b) The list of persons be available for public inspection.

(c) A performance bond and a payment bond as required by this section be provided for contracts for construction by contractors.

(d) All bids for construction be opened at a public opening and the bids shall remain confidential until the public opening.

(e) All persons desiring to submit bids be treated equitably and the information related to each project be available to all eligible persons.

(f) Competition for construction projects under the simplified school construction procurement program be encouraged to the maximum extent possible. At a minimum, a school district shall submit information on each project to all persons listed with the county school superintendent by any school district within that county.
(g) A provision, covenant, clause or understanding in, collateral
to or affecting a construction contract that makes the contract subject to
the laws of another state or that requires any litigation, arbitration or
other dispute resolution proceeding arising from the contract to be
conducted in another state is against this state's public policy and is
void and unenforceable.

3. The state board of education shall adopt rules for the
procurement of goods and information services by school districts and
charter schools using electronic, online bidding. The rules adopted by
the state board shall include the use of reverse auctions and shall be
consistent with the procurement practices prescribed in title 41, chapter
23, article 13, modifying as necessary those provisions and the rules
adopted pursuant to that article that the state board determines are not
appropriate for school districts and charter schools. Until the rules are
adopted, school districts and charter schools may procure goods and
information services pursuant to title 41, chapter 23, article 13 using
the rules adopted by the department of administration in implementing that
article.

4. The state board shall adopt rules for the procurement by school
districts of any materials, services, goods, construction or construction
services that ensure maximum practicable competition as prescribed in
section 41-2565 and shall require that a person:

(a) That contracts for or purchases any materials, services, goods,
construction or construction services in a manner contrary to the rules
adopted by the state board pursuant to this section is personally liable
for the recovery of all public monies paid plus twenty percent of that
amount and legal interest from the date of payment and all costs and
damages arising out of the violation as prescribed in section 41-2616.

(b) That intentionally or knowingly contracts for or purchases any
materials, services, goods, construction or construction services pursuant
to a scheme or artifice to avoid the rules adopted by the state board
pursuant to this section is guilty of a class 4 felony as prescribed in
section 41-2616.

(c) That prepares procurement specifications may not receive any
direct or indirect benefit from using those specifications.

(d) That serves on a selection committee for a procurement may not
be a contractor or subcontractor under a contract awarded under the
procurement or provide any specified professional services, construction,
construction services, materials or other services under the contract. A
person that serves on a selection committee for a procurement and that
fails to disclose contact with a representative of a competing vendor or
fails to provide required accurate information is subject to a civil
penalty as prescribed in section 41-2616.
5. The state board shall adopt rules requiring school districts to obtain and maintain a record of proof that a construction or construction services provider that has been awarded a contract with the school district, or school purchasing cooperative, has a valid license to practice in this state.

6. The auditor general shall review the proposed rules to determine whether the rules are consistent with the procurement practices prescribed in title 41, chapter 23 and any modifications are required to adapt the procedures for school districts.

7. If the auditor general approves the proposed rules, the auditor general shall notify the state board in writing and the state board shall adopt such rules.

8. If the auditor general objects to the proposed rules, the auditor general shall notify the state board of the objections in writing and the state board, in adopting the rules, shall conform the proposed rules to meet the objections of the auditor general or revise the proposed rules to which an objection has been made and submit the revisions to the auditor general for approval.

B. After the bids submitted in response to an invitation for bids are opened and the award is made or after the proposals or qualifications are submitted in response to a request for proposals or a request for qualifications and the award is made, the governing board shall make available for public inspection all information, all bids, proposals and qualifications submitted and all findings and other information considered in determining whose bid conforms to the invitation for bids and will be the most advantageous with respect to price, conformity to the specifications and other factors or whose proposal or qualifications are to be selected for the award, including the rationale for awarding a contract for any specified professional services, construction, construction services or materials to an entity selected from a qualified select bidders list or through a school purchasing cooperative. The invitation for bids, request for proposals or request for qualifications shall include a notice that all information and bids, proposals and qualifications submitted will be made available for public inspection. The rules adopted by the state board shall prohibit the use in connection with procurement of specifications in any way proprietary to one supplier unless the specification includes all of the following:

1. A statement of the reasons why no other specification is practicable.

2. A description of the essential characteristics of the specified product.

3. A statement specifically permitting allowing an acceptable alternative product to be supplied.
C. A project or purchase may not be divided or sequenced into separate projects or purchases in order to avoid the limits prescribed by the state board under subsection A of this section.

D. A contract for the procurement of construction or construction services shall include a provision that provides for negotiations between the school district and the contractor for the recovery of damages related to expenses incurred by the contractor for a delay for which the school district is responsible, that is unreasonable under the circumstances and that was not within the contemplation of the parties to the contract. This subsection does not void any provision in the contract that requires notice of delays, provides for arbitration or any other procedure for settlement or provides for liquidated damages.

E. The auditor general may conduct discretionary reviews, investigations and audits of the financial and operational procurement activities of school districts, nonexempt charter schools and school purchasing cooperatives. The auditor general has final review and approval authority over all school district, nonexempt charter school and school purchasing cooperative audit contracts and any audit reports issued in accordance with this section. If the attorney general has reasonable cause to believe an employee of a school district or school purchasing cooperative, or an employee of an entity that has been awarded a contract by a school district or school purchasing cooperative, has engaged in, is engaging in or is about to engage in any practice or transaction that violates the rules adopted by the state board of education pursuant to this section, the attorney general may:

1. Require that person to file on forms prescribed by the attorney general a statement or report in writing and under oath as to all the facts and circumstances concerning a violation of the rules adopted by the state board pursuant to this section by that person and any other data and information deemed necessary by the attorney general.

2. Examine under oath any person in connection with a violation of the rules adopted by the state board pursuant to this section.

F. In addition to the requirements of sections 15-914 and 15-914.01, school districts, nonexempt charter schools and school purchasing cooperatives, in connection with any audit conducted by a certified public accountant, shall contract for a systematic review of purchasing practices using methodology consistent with sampling guidelines established by the auditor general. The auditor general shall consider cost when establishing guidelines pursuant to this subsection and to the extent possible shall attempt to minimize the cost of the review. The purpose of the review is to determine whether the school district, nonexempt charter school or school purchasing cooperative is in compliance with the procurement laws and applicable procurement rules of this state. A copy of the review shall be submitted on completion to the auditor general. The auditor general may conduct discretionary reviews of school
districts, nonexempt charter schools and school purchasing cooperatives that are not required to contract for independent audits.

G. A school district school employee who has control over personnel actions may not take reprisal against a school district school employee for that employee's disclosure of information that is a matter of public concern, including a violation of this section, to a public body pursuant to title 38, chapter 3, article 9.

H. The attorney general or county attorney has jurisdiction to enforce this section. The attorney general or county attorney may seek relief for any violation of this section through an appropriate civil or criminal action in superior court, including an action to enjoin a threatened or pending violation of this section and including an action to enforce compliance with any request for documents made by the auditor general pursuant to this section.

I. The department of education shall enact policies and procedures for the acceptance and disposition of complaints from the public regarding school procurement practices and shall forward all school procurement complaints to the attorney general. Notwithstanding rules adopted by the state board, school districts shall not be required to prepare or submit an annual report on the benefits associated with the use of construction-manager-at-risk, design-build, qualified select bidders list and job-order-contracting methods.

J. The state board of education shall adopt, and the auditor general shall review, rules authorizing school districts to procure construction services by construction-manager-at-risk, design-build, qualified select bidders list and job-order-contracting methods of project delivery. The rules shall not require school districts to obtain bid security for the construction-manager-at-risk method of project delivery.

K. A school district or charter school may evaluate United States general services administration contracts for materials and services. The governing board or governing body may authorize purchases under a current contract for materials or services without complying with the requirements of the procurement rules adopted by the state board of education if the governing board or governing body determines in writing that all of the following apply:

1. The price for materials or services is equal to or less than the contractor's current federal supply contract price with the general services administration.

2. The contractor has indicated in writing that the contractor is willing to extend the current federal supply contract pricing, terms and conditions to the school district or charter school.

3. The purchase order adequately identifies the federal supply contract on which the order is based.

4. The purchase contract is cost effective and is in the best interests of the school district or charter school.
L. Unless otherwise provided by law, multiterm contracts for
materials or services and contracts for job-order-contracting construction
services may be entered into if the duration of the contract and the
conditions of renewal or extension, if any, are included in the invitation
for bids or the request for proposals and if monies are available for the
first fiscal period at the time the contract is executed. The duration of
contracts for materials or services and contracts for
job-order-contracting construction services are limited to NOT more
than five years unless the governing board determines in writing before
the procurement solicitation is issued that a contract of longer duration
would be advantageous to the school district. Payment and performance
obligations for succeeding fiscal periods are subject to the availability
and appropriation of monies.

M. Notwithstanding the rules adopted by the state board of
education, the maximum dollar amount of an individual job order for
job-order-contracting construction services is $1,000,000 or a higher or
lower amount prescribed by the governing board in a policy adopted in a
public meeting held pursuant to title 38, chapter 3, article 3.1.
Requirements shall not be artificially divided or fragmented in order to
constitute a job order that satisfies the requirements of this subsection.

N. A person who supervises or participates in contracts, purchases,
payments, claims or other financial transactions, or a person who
supervises or participates in the planning, recommending, selecting or
contracting for materials, services, goods, construction, or construction
services of a school district or school purchasing cooperative is guilty
of a class 6 felony if the person solicits, accepts or agrees to accept
any personal gift or benefit with a value of $300 or more from a person or
vendor that has secured or has taken steps to secure a contract, purchase,
payment, claim or financial transaction with the school district or school
purchasing cooperative. Soliciting, accepting or agreeing to accept any
personal gift or benefit with a value of less than $300 is a class 1
misdemeanor. A gift or benefit does not include an item of nominal value
such as a greeting card, t-shirt, mug or pen.

O. Any person or vendor that has secured or has taken steps to
secure a contract, purchase, payment, claim or financial transaction with
a school district or school purchasing cooperative that offers, confers or
agrees to confer any personal gift or benefit with a value of $300 or more
on a person who supervises or participates in contracts, purchases,
payments, claims or other financial transactions, or on a person who
supervises or participates in planning, recommending, selecting or
contracting for materials, services, goods, construction or construction
services of a school district or school purchasing cooperative, is guilty
of a class 6 felony. Offering, conferring or agreeing to confer any
personal gift or benefit with a value of less than $300 is a class 1
misconduct. A gift or benefit does not include an item of nominal value
such as a greeting card, t-shirt, mug or pen.

P. Any person or vendor convicted under subsection O of this
section may be suspended for up to six months or barred for up to three
years by the director of the department of administration from doing
business with school districts and school purchasing cooperatives. The
director of the department of administration shall adopt rules, including
administrative procedures, to suspend or bar any person from consideration
for award of contracts pursuant to this section.

Q. For the purposes of this section:
1. "Gift or benefit" means a payment, distribution, expenditure,
advance, deposit or donation of monies, any intangible personal property
or any kind of tangible personal or real property. Gift or benefit does
not include either:
   (a) Food or beverage.
   (b) Expenses or sponsorships relating to a special event or
function to which individuals listed in subsection N of this section are
invited.
2. "Nonexempt charter school" means a charter school that is not
exempted from procurement laws pursuant to section 15-183, subsection E,
paragraph 6.
3. "School purchasing cooperative" means an entity that is engaged
in cooperative purchasing as defined in section 41-2631.
4. "Total cost" means the cost of all materials and services,
including the cost of labor performed by employees of the school district,
for all construction as provided in subsection A of this section.

Sec. 3. Section 28-6924, Arizona Revised Statutes, is amended to
read:
28-6924. Progress payments; changed or additional work;
attorney fees; definitions
A. The following apply to the department's highway construction
projects awarded pursuant to section 28-6923, 28-7365 or 28-7366:
1. Progress payments may be made by the department to the
contractor on the basis of a duly certified and approved estimate of the
work performed during a preceding period of time. The progress payments
shall be paid on or before fourteen days after the estimate of the work is
certified and approved. The estimate of the work shall be deemed received
by the department on submission to the person designated by the department
for the submission, review or approval of the estimate of the work. An
estimate of the work submitted under this section shall be deemed approved
and certified after seven days from the date of submission unless
before that time the department prepares and issues a specific written
finding detailing those items in the estimate of the work that are not
approved and certified under the contract. The department may withhold an
amount from the progress payment THAT IS sufficient to pay the expenses
the department reasonably expects to incur in correcting the deficiency set forth in the written finding. On completion and acceptance of separate divisions of the contract on which the price is stated separately in the contract, payment may be made in full including retained percentages, less deductions, unless a substitute security has been provided.

2. The contractor shall pay to the contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractors or material suppliers, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the contractor or subcontractor on account of the work performed by the contractor's or subcontractor's subcontractors or material suppliers, to the extent of each subcontractor's or material supplier's interest in the amount. These payments to subcontractors or material suppliers shall be based on payments received pursuant to this section. Any diversion by the contractor or subcontractor of payment received for work performed on a contract or failure to reasonably account for the application or use of the payments constitutes grounds for disciplinary action by the registrar of contractors. A subcontractor or material supplier shall notify the registrar of contractors and the department in writing of any payment less than the amount of percentage approved for the class or item of work as set forth in this section.

3. A subcontractor may notify the department in writing requesting that the subcontractor be notified by the department in writing within five days after payment of each progress payment made to the contractor. The subcontractor's request under this paragraph remains in effect for the duration of the subcontractor's work on the project.

4. If any payment to a contractor is delayed after the date due, interest shall be paid at the rate of one per cent per month or a fraction of the month on the unpaid balance.

5. If any periodic or final payment to a subcontractor or material supplier is delayed by more than seven days after receipt of the periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent per month or a fraction of a month on the unpaid balance.

B. A contract for construction shall not materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section.

C. Nothing in This section prevents a contractor or subcontractor, at the time of application and certification to the department or contractor, from withholding the application and certification to the department or contractor for payment to the subcontractor or material supplier for unsatisfactory job progress.
defective construction work or materials not remedied, disputed work or materials, third-party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract amount or a reasonable amount for retention that does not exceed the annual percentage retained by the department.

D. This section creates no duty of the department to a subcontractor or material supplier other than the duty to notify pursuant to subsection A, paragraph 3 of this section and creates no cause of action in favor of a subcontractor or material supplier against this state, the department or any state employee or agent.

E. IF THE DEPARTMENT DIRECTS THE CONTRACTOR IN WRITING TO PERFORM CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE TERMS OF THE CONSTRUCTION CONTRACT AND THE CONTRACTOR SUBMITS TO THE DEPARTMENT A REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR THE CHANGED OR ADDITIONAL WORK, THE CONTRACTOR MAY REQUEST PAYMENT FOR CHANGED OR ADDITIONAL WORK THAT THE CONTRACTOR COMPLETED DURING THE PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE CONTRACTOR INCURRED TO PERFORM THAT WORK. THE PERSON DESIGNATED IN THE CONSTRUCTION CONTRACT TO CERTIFY AND APPROVE THE MONTHLY PAYMENT ESTIMATE SHALL MAKE AN INTERIM DETERMINATION FOR PURPOSES OF APPROVAL FOR PAYMENT OF THOSE COSTS AND CERTIFY FOR PAYMENT THE AMOUNT THAT PERSON DETERMINES TO BE REASONABLY JUSTIFIED. EITHER PARTY MAY DISAGREE WITH THE INTERIM DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH THE TERMS OF THE CONSTRUCTION CONTRACT.

G. IN ANY ACTION OR ARBITRATION BROUGHT PURSUANT TO THIS SECTION, THE SUCCESSFUL PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES AND COSTS.

H. FOR THE PURPOSES OF THIS SECTION:

1. "CONSTRUCTION CONTRACT" MEANS A WRITTEN AGREEMENT RELATING TO CONSTRUCTING, ALTERING OR REPAIRING ALL WORK ON STATE HIGHWAYS.

2. "CONTRACTOR":
   (a) MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION OR OTHER ORGANIZATION, OR A COMBINATION OF ANY OF THEM, THAT HAS A DIRECT CONTRACT WITH THE DEPARTMENT TO PERFORM WORK UNDER A CONSTRUCTION CONTRACT.
   (b) DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

3. "COSTS" MEANS THE AGGREGATE COSTS OF ALL LABOR, MATERIALS, EQUIPMENT AND SERVICES.

4. "SUBCONTRACTOR":
   (a) MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION OR OTHER ORGANIZATION, OR A COMBINATION OF ANY OF THEM, THAT HAS A DIRECT CONTRACT WITH A CONTRACTOR OR ANOTHER SUBCONTRACTOR TO PERFORM A PORTION OF THE WORK UNDER A CONSTRUCTION CONTRACT.
   (b) DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

5. "WORK" MEANS THE LABOR, MATERIALS, EQUIPMENT AND SERVICES TO BE PROVIDED BY A CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT.

Sec. 4. Section 34-221, Arizona Revised Statutes, is amended to read:

34-221. Contract with successful bidder; payments to contractor and design professional; security; recovery of damages for delay; progress payments; changed or additional work; attorney fees; definitions

A. The agent shall enter into a contract with the lowest responsible bidder whose proposal is satisfactory, except that in determining the lowest responsible bidder under this section, the board of supervisors may consider, for NOT more than five projects, the time of completion proposed by the bidder, the value over time of completed services and facilities and the value over time of interrupted services if the board determines that this procedure will serve the public interest 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 and if the formula for considering the
time of completion is specifically stated in the bidding information.

B. In determining the lowest responsible bidder for a horizontal
construction project using the design-bid-build project delivery method,
an agent may consider the time of completion proposed by the bidder if the
agent determines that this procedure will serve the public interest 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 and if the formula for considering the
time of completion is specifically stated in the bidding information.

C. The terms of a contract entered into pursuant to subsection A of
this section shall include the following items:

1. A surety company bond or bonds as required under this article.
2. The owner by mutual agreement may make progress payments on
contracts of less than ninety days and shall make monthly progress
payments on all other contracts as provided for in this paragraph.

Payment to the contractor on the basis of a duly certified and approved
estimate of the work performed during the preceding calendar month under
such contract may include payment for material and equipment, but to
ensure the proper performance of such contract, the owner shall retain ten
percent of the amount of each estimate until final completion and
acceptance of all material, equipment and work covered by the contract.
An estimate of the work submitted shall be deemed approved and certified
for payment seven days after the date of submission unless before that
time the owner or owner's agent 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 owner may
withhold an amount from the progress payment sufficient to pay the
expenses the owner reasonably expects to incur in correcting the
deficiency set forth in the written finding. The progress payments shall
be paid on or before fourteen days after the estimate of the work is
certified and approved. The estimate of the work shall be deemed received
by the owner on submission to any person designated by the owner for the
submission, review or approval of the estimate of the work.

3. When the contract is fifty percent completed, one-half of the
amount retained, including any securities substituted under paragraph 5 of
this subsection, shall be paid to the contractor on the contractor's
request if the contractor is making satisfactory progress on the contract
and there is no specific cause or claim requiring a greater amount to be
retained. After the contract is fifty percent completed, not more than
five percent of the amount of any subsequent progress payments made under
the contract may be retained if the contractor is making satisfactory
progress on the project, except that if at any time the owner determines
satisfactory progress is not being made, ten percent retention shall be
reinstated for all progress payments made under the contract subsequent to
the determination.

4. On completion and acceptance of each separate building, public
work or other division of the contract on which the price is stated
separately in the contract, except as qualified in paragraph 5 of this
subsection, payment may be made in full, including retained percentages
thereon, minus authorized deductions. In preparing estimates, the
material and equipment delivered on the site to be incorporated in the job
shall be taken into consideration in determining the estimated value by
the architect or engineer.

5. Ten percent of all estimates shall be retained by the agent as a
guarantee for complete performance of the contract, to be paid to the
contractor within sixty days after completion or filing notice of
completion of the contract. Retention of payments by a purchasing agency
longer than sixty days after final completion and acceptance requires a
specific written finding by the purchasing agency of the reasons
justifying the delay in payment. A purchasing agency may not retain any
monies after sixty days that are in excess of the amount necessary to pay
the expenses the purchasing agency reasonably expects to incur in order to
pay or discharge the expenses determined by the purchasing agency in the
finding justifying the retention of monies. In lieu of the retention
provided in this section, the agent, at the option of the contractor,
shall accept as a substitute an assignment of money market accounts,
demand deposit accounts, time certificates of deposit of banks licensed by
this state, securities of or guaranteed by the United States of America,
securities of this state, securities of counties, municipalities and
school districts within this state or shares of savings and loan
associations authorized to transact business in this state, in an amount
equal to ten percent of all estimates, which shall be retained by the
agent as a guarantee for complete performance of the contract. If the
contractor opts for substitute security as described in this paragraph for
the ten percent retention, the contractor is entitled to receive all
interest or income earned by such security as it accrues, and all such
security in lieu of retention shall be returned to the contractor by the
agent within sixty days after final completion and acceptance of all
material, equipment and work covered by the contract if the contractor has
furnished the agent satisfactory receipts for all labor and material
billed and waivers of liens from any and all persons holding claims
against the work. The agent may not accept a money market account, A
demand deposit account, A time certificate of deposit of a bank or shares
of a savings and loan association in lieu of the retention specified
unless accompanied by a signed and acknowledged waiver of the bank or
savings and loan association of any right or power to setoff against
either the agent or the contractor in relationship to the certificates or
shares assigned. The amount deposited in a money market account or demand
deposit account in lieu of the retention provided in this section shall not be released by the financial institution to the contractor except on written authorization of the agent.

6. If the agent has accepted substitute security as provided in paragraph 5 of this subsection, any subcontractor undertaking to perform any part of such public work is entitled to provide substitute security to the contractor on terms and conditions similar to those described in paragraph 5 of this subsection, and such security is in lieu of any retention under the subcontract.

D. A contract for construction or design professional services may not materially alter the rights of any contractor, subcontractor, design professional or material supplier to receive prompt and timely payment required to be included in the contract under subsection C of this section.

E. The contract shall be signed by the agent and the contractor.

F. A contract for the procurement of construction shall include a provision that provides for negotiations between the agent and the contractor for the recovery of damages related to expenses incurred by the contractor for a delay for which the agent is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the contract. This section does not void any provision in the contract that requires notice of delays or provides for arbitration or other procedure for settlement or provides for liquidated damages.

G. The contractor shall pay to the contractor's subcontractors, design professionals or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor, design professional or material supplier, within seven days after receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the contractor, subcontractor or design professional on account of the work performed by subordinate subcontractors or design professionals, to the extent of each such subcontractor's or design professional's interest therein, except that a contract for construction may not materially alter the rights of any contractor, subcontractor, design professional or material supplier to receive prompt and timely payment as provided under this section. Such payments to subcontractors, design professionals or material suppliers shall be based on payments received pursuant to this section. Any diversion by the contractor or subcontractor of payments received for work performed on a contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the registrar of contractors. The subcontractor or material supplier shall notify the registrar of contractors and the purchasing agency in writing of any payment that is less than the amount or percentage approved for the class or item of work as set forth in this section.
H. A subcontractor or design professional may notify the purchasing agency in writing requesting that the subcontractor or design professional be notified by the purchasing agency in writing within five days after payment of each progress payment made to the contractor. The subcontractor's or design professional's request remains in effect for the duration of the subcontractor's or design professional's work on the project.

I. This chapter does not prevent the contractor or subcontractor, at the time of application and certification to the owner or contractor, from withholding such application and certification to the owner or contractor for payment to the subcontractor, design professional or material supplier for unsatisfactory job progress, defective design professional services or construction work or materials not remedied, disputed design professional services, work or materials, third-party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor or design professional to make timely payments for design professional services, labor, equipment and materials, damage to the contractor or another subcontractor or design professional, reasonable evidence that the subcontract or design professional service contract cannot be completed for the unpaid balance of the subcontract or design professional service contract sum or a reasonable amount for retention that does not exceed the actual percentage retained by the owner.

J. If any payment to a contractor is delayed after the date due, interest shall be paid at the rate of one percent per month or fraction of a month on such unpaid balance as may be due.

K. If any periodic or final payment to a subcontractor or design professional is delayed by more than seven days after receipt of the periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay a subordinate subcontractor, design professional or material supplier interest, beginning on the eighth day, at the rate of one percent per month or a fraction of a month on such unpaid balance as may be due.

L. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR THE CHANGED OR ADDITIONAL WORK, THE CONTRACTOR MAY REQUEST PAYMENT FOR CHANGED OR ADDITIONAL WORK THAT THE CONTRACTOR COMPLETED DURING THE PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE CONTRACTOR INCURRED TO PERFORM THAT WORK. THE PERSON DESIGNATED IN THE CONSTRUCTION CONTRACT TO CERTIFY AND APPROVE THE MONTHLY PAYMENT ESTIMATE SHALL MAKE AN INTERIM DETERMINATION FOR PURPOSES OF APPROVAL FOR PAYMENT OF THOSE COSTS AND CERTIFY FOR PAYMENT THE AMOUNT THAT PERSON DETERMINES TO BE REASONABLY JUSTIFIED. EITHER PARTY MAY DISAGREE WITH THE INTERIM
DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH THE TERMS OF THE
CONSTRUCTION CONTRACT.

M. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE
CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
CONTRACT AND IF THE CONTRACTOR DIRECTS THE SUBCONTRACTOR TO PERFORM THE
CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT
BETWEEN THE CONTRACTOR AND SUBCONTRACTOR AND THE SUBCONTRACTOR SUBMITS TO
THE CONTRACTOR A REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL
WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL
DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR THE CHANGED OR ADDITIONAL
WORK, THE SUBCONTRACTOR MAY REQUEST PAYMENT FROM THE CONTRACTOR FOR THE
PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
SUBCONTRACTOR INCURRED TO PERFORM THAT WORK. EITHER PARTY MAY DISAGREE
WITH THE INTERIM DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH
THE TERMS OF THE AGREEMENT BETWEEN THE CONTRACTOR AND SUBCONTRACTOR.

N. IN ANY ACTION OR ARBITRATION BROUGHT PURSUANT TO THIS SECTION,
THE SUCCESSFUL PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES AND COSTS.

O. For the purposes of this section:

1. CONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT
FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED
PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER
IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED
PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

2. "COSTS" MEANS THE AGGREGATE COST OF ALL LABOR, MATERIALS,
EQUIPMENT AND SERVICES.

3. "Design professional service contract" means a written
agreement relating to the planning, design, construction administration,
study, evaluation, consulting, inspection, surveying, mapping, material
sampling, testing or other professional, scientific or technical services
furnished in connection with any actual or proposed study, planning,
survey, environmental remediation, construction, improvement, alteration,
repair, maintenance, relocation, moving, demolition or excavation of a
structure, street or roadway, appurtenance, facility, development or other
improvement to land.

4. "Design professional services" means architect services,
engineer services, land surveying services, geologist services or
landscape architect services or any combination of those services
performed by or under the supervision of a design professional or an
employee or subconsultant of the design professional.
3. 5. "Subconsultant" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct contract with a design professional or another subconsultant to perform a portion of the work under a design professional service contract.

6. SUBCONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

7. "WORK" MEANS THE LABOR, MATERIALS, EQUIPMENT AND SERVICES TO BE PROVIDED BY A CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT.

Sec. 5. Section 34-609, Arizona Revised Statutes, is amended to read:

34-609. Contracts for construction-manager-at-risk, design-build and job-order-contracting construction services; payments to contractor; security; recovery of damages by contractor for delay; progress payments; changed or additional work; attorney fees; definitions

A. An agent shall enter into a contract with the selected person or firm for construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

B. The terms of a contract entered into pursuant to subsection A shall include the following items:

1. A surety company bond or bonds as required by this chapter.

2. The owner by mutual agreement may make progress payments on contracts of less than ninety days and shall make monthly progress payments on all other contracts as provided for in this paragraph. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under the contract may include payment for material and equipment, but to ensure the proper performance of the contract, the owner shall retain ten percent of the amount of each estimate until final completion and acceptance of all material, equipment and work covered by the contract. 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 owner or owner's agent 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 owner may withhold an amount from the progress payment sufficient to pay the expenses the owner reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received
by the owner on submission to any person designated by the owner for the
submission, review or approval of the estimate of the work.

3. When the contract is fifty percent percent completed, one-half
of the amount retained including any securities substituted under
paragraph 5 of this subsection shall be paid to the contractor on the
contractor's request provided the contractor is making satisfactory
progress on the contract and there is no specific cause or claim requiring
a greater amount to be retained. After the contract is fifty percent percent
completed, no more than five percent 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,
except that if at any time the owner determines satisfactory progress is
not being made, ten percent percent retention shall be reinstated for all
progress payments made under the contract after the determination.

4. On completion and acceptance of each separate building, public
work or other division of the contract on which the price is stated
separately in the contract, except as qualified in paragraph 5 of this
subsection, payment may be made in full, including retained percentages,
less authorized deductions. In preparing estimates, the material and
equipment delivered on the site to be incorporated in the job shall be
taken into consideration in determining the estimated value by the
architect, engineer or other person, as specified in the contract.

5. Ten percent percent of all estimates shall be retained by the
agent as a guarantee for complete performance of the contract, to be paid
to the contractor within sixty days after completion or filing notice of
completion of the contract. Retention of payments by an agent longer than
sixty days after final completion and acceptance requires a specific
written finding by the agent of the reasons justifying the delay in
payment. No agent may retain any monies after sixty days that are
in excess of the amount necessary to pay the expenses the agent reasonably
expects to incur in order to pay or discharge the expenses determined by
the agent in the finding justifying the retention of monies. In lieu of
the retention provided in this section, the agent, at the option of the
contractor, shall accept as a substitute an assignment of time
certificates of deposit of banks licensed by this state, securities of or
guaranteed by the United States of America, securities of this state,
securities of counties, municipalities and school districts within this
state or shares of savings and loan associations authorized to transact
business in this state, in an amount equal to ten percent percent of all
estimates that are retained by the agent as a guarantee for complete
performance of the contract. If the agent accepts substitute security as
described in this paragraph for the ten percent percent retention, the
contractor is entitled to receive all interest or income earned by this
security as it accrues and all such security in lieu of retention shall be
returned to the contractor by the agent within sixty days after final
completion and acceptance of all material, equipment and work covered by
the contract if the contractor has furnished the agent satisfactory
receipts for all labor and material billed and waivers of liens from any
and all persons holding claims against the work. In no event shall the
agent MAY NOT accept a time certificate of deposit of a bank or shares of
a savings and loan association in lieu of the retention specified unless
accompanied by a signed and acknowledged waiver of the bank or savings and
loan association of any right or power to setoff against either the agent
or the contractor in relationship to the certificates or shares assigned.

6. In any instance where IF the agent has accepted substitute
security as provided in paragraph 5 OF THIS SUBSECTION, any subcontractor
undertaking to perform any part of this public work is entitled to provide
substitute security to the contractor on terms and conditions similar to
those described in paragraph 5 OF THIS SUBSECTION, and this security is in
lieu of any retention under the subcontract.

7. Notwithstanding paragraphs 1 through 6 OF THIS SUBSECTION, any
other provision of this section and any other law, there is no retention
for job-order-contracting construction services contracts and the agent
may elect to have no retention for construction-manager-at-risk and
design-build construction services contracts.

C. No A contract for construction services may NOT materially alter
the rights of any contractor, subcontractor or material supplier to
receive prompt and timely payment required to be included in the contract
under subsection B OF THIS SECTION.

D. The contract shall be signed by the agent and the contractor.

E. A contract for the procurement of construction services shall
include a provision that provides for negotiations between the agent and
the contractor for the recovery of damages related to expenses incurred by
the contractor for a delay for which the agent is responsible, that is
unreasonable under the circumstances and that was not within the
contemplation of the parties to the contract. This section shall NOT be
construed to DOES NOT void any provision in the contract that requires
notice of delays, provides for arbitration or other procedures for
settlement or provides for liquidated damages.

F. The contractor shall pay to the contractor's subcontractors or
material suppliers and each subcontractor shall pay to the subcontractor's
subcontractor or material supplier, within seven days of AFTER receipt of
each progress payment, unless otherwise agreed in writing by the parties,
the respective amounts allowed the contractor or subcontractor on account
of the work performed by the subcontractors, to the extent of each
subcontractor's interest, except that no A contract for construction
services may NOT materially alter the rights of any contractor,
subcontractor or material supplier to receive prompt and timely payment as
provided under this section. The payments to subcontractors or material
suppliers shall be based on payments received pursuant to this section.
Any diversion by the contractor or subcontractor of payments received for work performed on a contract, or failure to reasonably account for the application or use of those payments, constitutes grounds for disciplinary action by the registrar of contractors. The subcontractor or material supplier shall notify the registrar of contractors and the agent in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this section.

G. A subcontractor may notify the agent in writing requesting that the subcontractor be notified by the agent in writing within five days from AFTER payment of each progress payment THAT IS made to the contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.

H. Nothing in This chapter prevents DOES NOT PREVENT the contractor or subcontractor, at the time of application and certification to the owner or contractor, from withholding the application and certification to the owner or contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third-party THIRD-PARTY claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention that does not exceed the actual percentage retained by the owner.

I. If any payment to a contractor is delayed after the date due interest shall be paid at the rate of one per cent PERCENT per month or fraction of a month on the unpaid balance as may be due.

J. If any periodic or final payment to a subcontractor is delayed by more than seven days after receipt of the periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent PERCENT per month or fraction of a month on the unpaid balance as may be due.

K. Notwithstanding anything to the contrary in this section, this section applies only to amounts payable in a construction services contract for construction and does not apply to amounts payable in a construction services contract for design services, preconstruction services, finance services, maintenance services, operations services and other related services.

L. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR
THE CHANGED OR ADDITIONAL WORK, THE CONTRACTOR MAY REQUEST PAYMENT FOR
CHANGED OR ADDITIONAL WORK THAT THE CONTRACTOR COMPLETED DURING THE
PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
CONTRACTOR INCURRED TO PERFORM THAT WORK. THE PERSON DESIGNATED IN THE
CONSTRUCTION CONTRACT TO CERTIFY AND APPROVE THE MONTHLY PAYMENT ESTIMATE
SHALL MAKE AN INTERIM DETERMINATION FOR PURPOSES OF APPROVAL FOR PAYMENT
OF THOSE COSTS AND CERTIFY FOR PAYMENT THE AMOUNT THAT PERSON DETERMINES
TO BE REASONABLY JUSTIFIED. EITHER PARTY MAY DISAGREE WITH THE INTERIM
DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH THE TERMS OF THE
CONSTRUCTION CONTRACT.

M. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE
CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
CONTRACT AND IF THE CONTRACTOR DIRECTS THE SUBCONTRACTOR TO PERFORM THE
CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT
BETWEEN THE CONTRACTOR AND SUBCONTRACTOR AND THE SUBCONTRACTOR SUBMITS TO
THE CONTRACTOR A REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL
WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL
DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR THE CHANGED OR ADDITIONAL
WORK, THE SUBCONTRACTOR MAY REQUEST PAYMENT FROM THE CONTRACTOR FOR THE
CHANGED OR ADDITIONAL WORK THAT THE SUBCONTRACTOR COMPLETED DURING THE
PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
SUBCONTRACTOR INCURRED TO PERFORM THAT WORK. EITHER PARTY MAY DISAGREE
WITH THE INTERIM DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH
THE TERMS OF THE AGREEMENT BETWEEN THE CONTRACTOR AND SUBCONTRACTOR.

N. IN ANY ACTION OR ARBITRATION BROUGHT PURSUANT TO THIS SECTION,
THE SUCCESSFUL PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES AND COSTS.

O. FOR THE PURPOSES OF THIS SECTION:
1. CONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT
FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED
PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER
IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED
PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

2. "COSTS" MEANS THE AGGREGATE COST OF ALL LABOR, MATERIALS,
EQUIPMENT AND SERVICES.

3. SUBCONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT
DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE
FORMED PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC
WATER IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT
FORMED PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

4. "WORK" MEANS THE LABOR, MATERIALS, EQUIPMENT AND SERVICES TO BE
PROVIDED BY A CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT.
Sec. 6. Section 41-2501, Arizona Revised Statutes, is amended to read:

41-2501. Applicability
   A. This chapter applies only to procurements initiated after January 1, 1985 unless the parties agree to its application to procurements initiated before that date.
   B. This chapter applies to every expenditure of public monies, including federal assistance monies except as otherwise specified in section 41-2637, by this state, acting through a state governmental unit as defined in this chapter, under any contract, except that this chapter does not apply to either grants as defined in this chapter, or contracts between this state and its political subdivisions or other governments, except as provided in chapter 24 of this title and in article 10 of this chapter. This chapter also applies to the disposal of state materials. This chapter and rules adopted under this chapter do not prevent any state governmental unit or political subdivision from complying with the terms of any grant, gift, bequest or cooperative agreement.
   C. All political subdivisions and other local public agencies of this state may adopt all or any part of this chapter and the rules adopted pursuant to this chapter.
   D. Notwithstanding any other law, sections 41-2517 and 41-2546 apply to any agency as defined in section 41-1001, including the office of the governor.
   E. The Arizona board of regents and the legislative and judicial branches of state government are not subject to this chapter except as prescribed in subsection SUBSECTIONS F AND G of this section.
   F. The Arizona board of regents and the judicial branch shall adopt rules prescribing procurement policies and procedures for themselves and institutions under their jurisdiction. The rules must be substantially equivalent to the other policies and procedures prescribed in this chapter, INCLUDING SECTIONS 41-2576 AND 41-2577.
   G. The judicial branch shall adopt rules prescribing procurement policies and procedures for itself and institutions under its jurisdiction. The rules must be substantially equivalent to the policies and procedures prescribed in this chapter.
   H. The Arizona state lottery commission is exempt from this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets and related materials. The executive director of the Arizona state lottery commission shall adopt rules substantially equivalent to the policies and procedures in this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets or related materials. All other procurement shall be as prescribed by this chapter.
H. I. The Arizona health care cost containment system administration is exempt from this chapter for provider contracts pursuant to section 36-2904, subsection A and contracts for goods and services, including program contractor contracts pursuant to title 36, chapter 29, articles 2 and 3 and contracts with regional behavioral health authorities pursuant to title 36, chapter 34. All other procurement, including contracts for the statewide administrator of the program pursuant to section 36-2903, subsection B, shall be as prescribed by this chapter.

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

K. The state transportation board and the director of the department of transportation are exempt from this chapter other than sections 41-2517 and 41-2586 and are subject to title 28, chapter 20 and Code of Federal Regulations section 200.317 for the procurement of the following:

1. All items of construction, reconstruction, rehabilitation, preservation or improvement undertaken on highway infrastructure.
2. Engineering services and any other work or activity to carry out engineering services related to highway infrastructure.
3. Right-of-way services related to land titles, appraisals, real property acquisitions, relocation services, property management and facility design.
4. Any other construction, reconstruction, rehabilitation, preservation or improvement work or activity that is required pursuant to title 28, chapter 20.

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

M. The secretary of state is exempt from this chapter for contracts entered into pursuant to section 41-1012 to publish and sell the administrative code. All other procurement shall be as prescribed by this chapter.

N. This chapter is not applicable to contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which this state is or may become a party or to contract for special investigative services for law enforcement purposes.
N. O. The head of any state governmental unit, in relation to any contract exempted by this section from this chapter, has the same authority to adopt rules, procedures or policies as is delegated to the director pursuant to this chapter.

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

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

1. With a provider licensed or certified by an agency of this state to provide child day care services.
2. With area agencies on aging created pursuant to the older Americans act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001 through 3058ff).
3. For services pursuant to title 36, chapter 29, article 2.
4. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

R. The Arizona health care cost containment system may not require that persons with whom it contracts follow this chapter for the purposes of subcontracts entered into for the provision of the following:

1. Mental health services pursuant to section 36-189, subsection B.
2. Services for the seriously mentally ill pursuant to title 36, chapter 5, article 10.
3. Drug and alcohol services pursuant to section 36-141.

S. The department of health services may not require that persons with whom it contracts follow this chapter for the purpose of subcontracts entered into for the provision of domestic violence services pursuant to title 36, chapter 30, article 1.

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

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

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

W. The Arizona state parks board is exempt from this chapter for purchases of guest supplies and items for resale such as food, linens, gift items, sundries, furniture, china, glassware and utensils for the facilities located in the Tonto natural bridge state park.
W. X. The Arizona state parks board is exempt from this chapter for the purchase, production, promotion, distribution and sale of publications, souvenirs and sundry items obtained and produced for resale.

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

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

Z. AA. Notwithstanding section 41-2534, the director of the state department of corrections may contract with local medical providers in counties with a population of less than four hundred thousand persons for the following purposes:

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

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

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

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

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

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

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

CC. DD. This section does not exempt third-party authorizations pursuant to title 28, chapter 13 from any other applicable law.
DD. EE. The state forester is exempt from this chapter for purchases and contracts relating to wildland fire suppression and pre-positioning equipment resources and for other activities related to combating wildland fires and other unplanned risk activities, including fire, flood, earthquake, wind and hazardous material responses. All other procurement by the state forester shall be as prescribed by this chapter.

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

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

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

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

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

KK. The department of gaming is exempt from this chapter for problem gambling treatment services contracts with licensed behavioral health professionals.

LL. This chapter does not apply to contracts for credit reporting services.

MM. This chapter does not apply to contracts entered into by the department of child safety:
1. With a provider of family foster care pursuant to section 8-503.
2. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.
3. For services pursuant to title 36, chapter 29, article 1 and as set forth in the approved medicaid state plan.

NN. This chapter does not apply to contracts entered into by the department of economic security with a financial institution to serve as a program manager and depository under section 46-903.
Sec. 7. Section 41-2577, Arizona Revised Statutes, is amended to read:

41-2577. Progress payments; changed or additional work; attorney fees; definitions

A. Progress payments may be made by this state to the contractor on the basis of a duly certified and approved estimate of the work performed during a preceding period of time as set by rule, except that a percentage of all estimates shall be retained as provided in section 41-2576. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the owner on submission to any person designated by the owner for the submission, review or approval of the estimate of the work. An estimate of the work submitted under this section shall be deemed approved and certified after seven days from the date of submission unless before that time the owner or owner’s agent prepares and issues a specific written finding detailing those items in the estimate of the work that are not approved and certified under the contract or design professional service contract. The owner may withhold an amount from the progress payment sufficient to pay the expenses the owner reasonably expects to incur in correcting the deficiency set forth in the written finding. On completion and acceptance of separate divisions of the contract or design professional service contract on which the price is stated separately in the contract or design professional service contract, payment may be made in full including retained percentages, less deductions, unless a substitute security has been provided pursuant to section 41-2576. No A contract for construction or design professional services may NOT materially alter the rights of any contractor, subcontractor, design professional or material supplier to receive prompt and timely payment as provided under this section.

B. The contractor shall pay to the contractor's subcontractors, design professionals or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor, design professional or material supplier, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the contractor, subcontractor or design professional on account of the work performed by the contractor's or subcontractor's subcontractors or design professionals, to the extent of each such subcontractor's or design professional's interest therein, except that no A contract for construction may NOT materially alter the rights of any contractor, subcontractor, design professional or material supplier to receive prompt and timely payment as provided under this section. These payments to subcontractors, design professionals or material suppliers shall be based on payments received pursuant to this section. Any diversion by the contractor, subcontractor or design professional of payments received for work performed on a contract, or failure to reasonably account for the
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application or use of such payments, constitutes grounds for disciplinary
action by the registrar of contractors. The subcontractor, design
professional or material supplier shall notify the registrar of
contractors and the purchasing agency in writing of any payment less than
the amount or percentage approved for the class or item of work or design
professional services as set forth in this section.

C. A subcontractor or design professional may notify the purchasing
agency in writing requesting that the subcontractor or design professional
be notified by the purchasing agency in writing within five days from
AFTER payment of each progress payment THAT IS made to the contractor.
The subcontractor's or design professional's request remains in effect for
the duration of the subcontractor's or design professional's work on the
project.

D. Nothing in This chapter prevents DOES NOT PREVENT the contractor
or subcontractor, at the time of application and certification to the
owner or contractor, from withholding such application and certification
to the owner or contractor for payment to the subcontractor, design
professional or material supplier for unsatisfactory job progress,
defective construction work or design professional services or materials
not remedied, disputed work or materials, third-party claims filed or
reasonable evidence that a claim will be filed, failure of a subcontractor
or design professional to make timely payments for labor, equipment and
materials or design professional services, damage to the contractor or
another subcontractor or design professional, reasonable evidence that the
subcontract or design professional service contract cannot be completed
for the unpaid balance of the subcontract or design professional service
contract sum or a reasonable amount for retention that does not exceed the
actual percentage retained by the owner.

E. If any payment to a contractor is delayed after the date due,
interest shall be paid at the rate of one percent per month or a fraction
of the month on such unpaid balance as may be due.

F. If any periodic or final payment to a subcontractor or design
professional is delayed by more than seven days after receipt of periodic
or final payment by the contractor or subcontractor, the contractor or
subcontractor shall pay the contractor's or subcontractor's subcontractor,
design professional or material supplier interest, beginning on the eighth
day, at the rate of one percent per calendar month or a fraction of a
calendar month on such unpaid balance as may be due.

G. Notwithstanding anything to the contrary in this section, this
section applies only to amounts payable in a construction services
contract for construction and in a contract for design services and does
not apply to amounts payable in a contract for preconstruction services,
finance services, maintenance services, operations services or any other
related services included in the contract.
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H. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE
CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
CONTRACT, PENDING A FINAL DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR
THE CHANGED OR ADDITIONAL WORK, THE CONTRACTOR MAY REQUEST PAYMENT FOR
CHANGED OR ADDITIONAL WORK THAT THE CONTRACTOR COMPLETED DURING THE
PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
CONTRACTOR INCURRED TO PERFORM THAT WORK. THE PERSON DESIGNATED IN THE
CONSTRUCTION CONTRACT TO CERTIFY AND APPROVE THE MONTHLY PAYMENT ESTIMATE
SHALL MAKE AN INTERIM DETERMINATION FOR PURPOSES OF APPROVAL FOR PAYMENT
OF THOSE COSTS AND CERTIFY FOR PAYMENT THE AMOUNT THAT PERSON DETERMINES
TO BE REASONABLY JUSTIFIED. EITHER PARTY MAY DISAGREE WITH THE INTERIM
DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH THE TERMS OF THE
CONSTRUCTION CONTRACT.

I. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE
CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
CONTRACT AND IF THE CONTRACTOR DIRECTS THE SUBCONTRACTOR TO PERFORM THE
CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT
BETWEEN THE CONTRACTOR AND SUBCONTRACTOR AND THE SUBCONTRACTOR SUBMITS TO
THE CONTRACTOR A REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL
WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL
DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR THE CHANGED OR ADDITIONAL
WORK, THE SUBCONTRACTOR MAY REQUEST PAYMENT FROM THE CONTRACTOR FOR THE
CHANGED OR ADDITIONAL WORK THAT THE SUBCONTRACTOR COMPLETED DURING THE
PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
SUBCONTRACTOR INCURRED TO PERFORM THAT WORK. EITHER PARTY MAY DISAGREE
WITH THE INTERIM DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH
THE TERMS OF THE AGREEMENT BETWEEN THE CONTRACTOR AND SUBCONTRACTOR.

J. IN ANY ACTION OR ARBITRATION BROUGHT PURSUANT TO THIS SECTION,
THE SUCCESSFUL PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES AND COSTS.

K. FOR THE PURPOSES OF THIS SECTION:
1. CONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT
FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED
PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER
IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED
PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.
2. "COSTS" MEANS THE AGGREGATE COST OF ALL LABOR, MATERIALS,
equipment and services.
3. SUBCONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

4. “WORK” MEANS THE LABOR, MATERIALS, EQUIPMENT AND SERVICES TO BE PROVIDED BY A CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT.

APPROVED BY THE GOVERNOR MARCH 23, 2022.