

**MESC Procurement Rules Review**

**COMPETITIVE SEALED BIDDING**

The Arizona Department of Education School District Procurement Rules contain specific requirements for competitive sealed bidding. Mohave has prepared this review of those requirements to assist members in performing due diligence reviews.

<b>RULE</b>	<b>MOHAVE RESPONSE</b>
<p><b>R7-2-1021. Method of Source Selection</b>                      Unless otherwise authorized by law, or as specified in A.R.S. § 15-213(A)(1) exempting the requirement to competitively bid the decision to participate in programs pursuant to A.R.S. § 15-382 for purchase of health and accident insurance and related employee benefits when such programs comply with bidding requirements for the subsequent purchase of reinsurance or the joint purchase of insurance or reinsurance, all school district contracts shall be awarded by competitive sealed bidding as provided in Sections R7-2-1021 through R7-2-1032, except as provided in Sections R7-2-1041 through R7-2-1068 and Sections R7-2-1117 through R7-2-1125.</p>	<p>Mohave complies with the rule. Mohave uses the competitive sealed bidding method of source selection unless it is determined that competitive sealed bidding is not practicable or advantageous to Mohave and its members.</p>
<p><b>R7-2-1022. Notice of competitive sealed bidding</b>                      A. Adequate public notice of the invitation for bids shall be given as provided in subsection (B) of this rule or in R7-2-1024(C). If notice is given pursuant to R7-2-1024(C), notice also may be given as provided in subsection (B). In the event there are 4 or less prospective bidders on the bidders' list, then notice also shall be given as provided in subsection (B). If the invitation for bids is for the procurement of services other than those described in Sections R7-2-1061 through R7-2-1068 and R7-2-1117 through R7-2-1123. Specified Professional Services, notice also shall be given as provided in subsection (B).</p>	<p>Mohave complies with the rule. Mohave issues a notice of invitation for bid to all vendors registered for the applicable material, service or construction.</p>
<p>B. In the event there are 4 or less prospective bidders on the bidders' list, the notice shall include publication in the official newspaper of the county as defined in A.R.S. § 11-255 within which the school district is located for 2 publications which are not less than 6 nor more than 10 days apart. The 2nd publication shall not be less than 2 weeks before bid opening. The time of publication may be altered if deemed necessary pursuant to R7-2-1024(A).</p>	<p>Mohave complies with the rule. If there are fewer than 5 vendors registered for a category, public notice is provided in the official newspaper of Mohave County. The Arizona Capitol Times may also be used for publication to provided broader coverage.</p>
<p>C. In addition to the notice provided in subsections (A) and (B), the school district may give such additional notice as the school district deems appropriate.</p>	<p>Mohave complies with the rule. Mohave provides additional notice as deemed appropriate. For example, all solicitations are posted on Mohave's website.</p>
<p><b>R7-2-1023. Prospective bidders' lists</b>                      A. The school district shall compile and maintain a prospective bidders' list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a district contract.</p>	<p>Mohave complies with the rule. Mohave maintains a web-based prospective bidders' list. The bidders' list is categorized by commodity and service group. Vendors choose the category(ies) applicable to their firms.</p>
<p>B. Persons desiring to be included on the prospective bidders' list shall notify the school district. Upon notification, the school district shall mail or otherwise provide the person with the school district procedures for inclusion on the bidders' list. Within 30 days after receiving the required information, the school district shall add the person to the prospective bidders' list unless the school district makes a determination that inclusion is not advantageous to the school district.</p>	<p>Mohave complies with the rule. Vendors add themselves to the prospective bidders' list by completing the electronic registration form on Mohave's website. Immediate confirmation of registration is provided by the system. Vendors maintain their registration records.</p>

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**COMPETITIVE SEALED BIDDING (cont'd)**

<b>RULE</b>	<b>MOHAVE RESPONSE</b>
<p>C. Persons who fail to respond to invitations for bids for 2 consecutive procurements of similar items may be removed from the applicable bidders' list after mailing a notice to the person. This notice shall not be required if the 2 invitations for bids which were not responded to both contained the notice that bidders' names may be removed from the bidders' list if they fail to respond to invitations for bids for 2 consecutive procurements of similar items. Persons may be reinstated upon request.</p>	<p>Mohave complies with the rule. Mohave's IFBs &amp; RFPs contain the notice that vendors may be removed from the prospective bidders' list if they fail to respond to 2 consecutive solicitations for similar procurements. The notice can be found in Mohave's General Terms &amp; Conditions, Removal from potential bidders list (pg 12).</p>
<p>D. Prospective bidders' lists shall be available for public inspection, unless the school district makes a written determination that it is in the best interest of the school district that they should be confidential or private and should not be open for inspection pursuant to A.R.S. § 39-121.</p>	<p>Mohave complies with the rule. The bidders' list is available for public inspection via Mohave's website. Bidders lists for specific procurements are available for public review by contacting Mohave.</p>
<p><b>R7-2-1024. Invitation for Bids</b>  A. Invitation for bids shall be issued at least 14 days before the time and date set for bid opening in the invitation for bids unless a shorter time is deemed necessary for a particular procurement as determined by the school district.</p>	<p>Mohave complies with the rule. IFBs are issued at least 14 days prior to the due date and time. Most are issued for approximately 30 days. See pg 1 of the IFB to find the date of the solicitation and due date and time.</p>
<p>B. Content.</p> <ol style="list-style-type: none"> <li>1. The invitation for bids shall include the following: <ol style="list-style-type: none"> <li>a. Notice that all information and bids submitted by bidders will be made available for public inspection following the award of the contract;</li> <li>b. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for bid opening, the address of the office at which bids are to be received, the period during which bids shall be accepted, and any other special information;</li> <li>c. Procurement of information systems and telecommunications systems shall include as price evaluation criteria the total life cycle cost and application benefits of the information systems or telecommunication systems.</li> <li>d. Procurement of earth-moving, material-handling, road maintenance and construction equipment shall include as price evaluation criteria the total life cycle cost including residual value of the earth-moving, material-handling, road maintenance and construction equipment.</li> <li>e. The purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;</li> <li>f. The factors to be used in bid evaluations;</li> </ol> </li> </ol>	<p>Mohave complies with the rule. See the section &amp; page of the IFB specified below.</p> <ol style="list-style-type: none"> <li>a. Public record (pg 5)</li> <li>b. Pgs 1 &amp; 3</li> <li>c. Telecommunications &amp; information systems (pg 7)</li> <li>d. Mohave does not contract for such equipment. Requirement would be added for applicable solicitation.</li> <li>e. Delivery (pg 6), Samples (pg 15), Specifications (pg 16), Warranty/quality guarantee (pg 18), Special Ts &amp; Cs and Specifications &amp; Scope of Work</li> <li>f. Criteria (pg 7)</li> </ol>

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**COMPETITIVE SEALED BIDDING (cont'd)**

<b>RULE</b>	<b>MOHAVE RESPONSE</b>
<p>g. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and</p> <p>h. The name of the district representative or district representatives.</p>	<p>g. General Ts &amp; Cs (pgs 4-18), Special Ts &amp; Cs and Specifications &amp; Scope of Work</p> <p>h. Protests (pg 15)</p>
<p>2. If the invitation for bids incorporates documents by reference, the invitation for bids shall specify where such documents may be obtained.</p>	<p>Mohave complies with the rule. Included in Special Ts &amp; Cs and Specifications &amp; Scope of Work when required.</p>
<p>3. An invitation for bids may require the submission of bid samples, descriptive literature and technical data and may require inspection or testing of a product before award.</p>	<p>Mohave complies with the rule. See "Samples" (pg 15) and "Warranty/quality guarantee" (pg 18).</p>
<p>C. The school district shall mail or otherwise furnish invitation for bids or notices of the availability of invitation for bids to all prospective bidders registered with the school district for the specific material, service or construction being bid.</p>	<p>Mohave complies with the rule. Mohave issues electronic or faxed notice of IFB/RFP to all vendors registered for the applicable material, service or construction.</p>
<p>D. A copy of the invitation for bids shall be made available for public inspection at the school district office.</p>	<p>Mohave complies with the rule. All IFBs are available for public inspection by download from Mohave's website or at a Mohave office.</p>
<p><b>R7-2-1025. Pre-bid conferences</b> The school district may conduct a pre-bid conference to explain the procurement requirements within a reasonable time before bid opening.</p>	<p>Mohave complies with the rule. Notice of any pre-bid conference is provided on pg 1 of the IFB.</p>
<p><b>R7-2-1026. Amendments to invitation for bids</b> A. An amendment to an invitation for bids shall be issued if necessary to:</p> <ol style="list-style-type: none"> <li>1. Make changes in the invitation for bids;</li> <li>2. Correct defects or ambiguities; or</li> <li>3. Furnish to other bidders information given to 1 bidder if the information will assist the other bidders in submitting bids or if the lack of the information will prejudice the other bidders.</li> </ol>	<p>Mohave complies with the rule. Amendments to IFBs are issued in accordance with the rule.</p>
<p>B. Amendments to invitation for bids shall be so identified and shall be distributed to all persons to whom the original invitation for bids was distributed by the school district.</p>	<p>Mohave complies with the rule. Amendments are identified as such and are numbered in order of issue. Amendments are properly distributed.</p>
<p>C. Amendments to invitation for bids shall be issued within a reasonable time before bid opening to allow prospective bidders to consider them in preparing their bids. If the school district determines that the time and date set for bid opening does not permit sufficient time for bid preparation, the time and date for bid opening shall be extended in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.</p>	<p>Mohave complies with the rule. Amendments are issued with sufficient time for review and response, or the bid due date and time are revised in the amendment.</p>
<p><b>R7-2-1027. Pre-opening modification or withdrawal of bids</b> A. A bidder may modify or withdraw his bid at any time before bid opening if the modification or withdrawal is received before the time and date set for bid opening at the location designated in the invitation for bids for receipt of bids.</p>	<p>Mohave complies with the rule. See "Offer acceptance period/withdrawal." (pg 10).</p>
<p>B. All documents concerning a modification or withdrawal of a bid shall be retained in the official records of the school district.</p>	<p>Mohave complies with the rule.</p>

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**COMPETITIVE SEALED BIDDING (cont'd)**

<b>RULE</b>	<b>MOHAVE RESPONSE</b>
<p><b>R7-2-1028. Late bids, late withdrawals and late modifications</b></p> <p>A. A bid, modification or withdrawal is late if it is received at the location designated in the invitation for bids for receipt of bids after the time and date set for bid opening.</p>	Mohave complies with the rule. See "Offer acceptance period/withdrawal." (pg 10).
<p>B. A late bid, late modification, or late withdrawal shall be rejected, unless the bid, modification, or withdrawal would have been timely received but for the action or inaction of school district personnel and is received before contract award.</p>	Mohave complies with the rule.
<p>C. Bidders submitting bids, modifications or withdrawals that are rejected as late shall be so notified as soon as practicable.</p>	Mohave complies with the rule. Faxed notification is provided.
<p>D. All documents concerning acceptance of a late bid, late modification, or late withdrawal shall be retained in the official records of the school district.</p>	Mohave complies with the rule.
<p><b>R7-2-1029. Receipt, opening and recording of bids</b></p> <p>A. Each bid and modification shall be time and date stamped upon receipt and stored unopened in a secure place until the time and date set for bid opening.</p>	Mohave complies with the rule. Bids are time and date stamped at time of receipt. All bids are logged with the time and date received. Bids are stored unopened in a secure place.
<p>B. Bids and modifications shall be opened publicly at the date, time and place designated in the invitation for bids and in the presence of 1 or more witnesses. The name of each bidder, the amount of each bid, and other relevant information deemed appropriate by the school district shall be recorded. The record shall be available for public inspection.</p>	Mohave complies with the rule. Bids are opened with one or more witnesses. Everyone attending bid opening signs in on a log sheet. The public record is available for public inspection.
<p>C. After contract award, the bids shall be available for public inspection, except that any portion of a bid that was designated as confidential pursuant to R7-2-1005 shall remain confidential from and after the time of bid opening.</p>	Mohave complies with the rule.
<p><b>R7-2-1030. Mistakes in bids</b></p> <p>A. After bid opening, a bid mistake based on an error in judgment may not be corrected or withdrawn. Other bid mistakes may be corrected or withdrawn pursuant to subsections (B) through (E) of this Section.</p>	Mohave complies with the rule.
<p>B. After bid opening, the school district shall either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the school district.</p>	Mohave complies with the rule.
<p>C. After bid opening, the bid may not be withdrawn and shall be corrected to the intended bid if a bid mistake and the intended bid are evident on the face of the bid.</p>	Mohave complies with the rule.
<p>D. After bid opening, the school district may permit a bidder to withdraw a bid if:</p> <ol style="list-style-type: none"> <li>1. A nonjudgmental mistake is evident on the face of the bid but the intended bid is not evident; or</li> <li>2. The bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.</li> </ol>	Mohave complies with the rule. Withdrawals are documented in writing.
<p>E. Mistakes shall not be corrected after award of the contract except where the school district makes a written determination that it would be unconscionable not to allow the mistake to be corrected.</p>	Mohave complies with the rule.
<p>F. If correction or withdrawal of a bid after bid opening is permitted or denied under subsections (C) and (D) of this Section, the school district shall prepare a written determination showing that the relief was permitted or denied under this Article.</p>	Mohave complies with the rule. Determinations are prepared and maintained in the procurement file.

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**COMPETITIVE SEALED BIDDING (cont'd)**

<b>RULE</b>	<b>MOHAVE RESPONSE</b>
G. Notwithstanding other provisions of this Section, after bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interest of the school district or fair competition shall be permitted.	Mohave complies with the rule.
<b>R7-2-1031. Bid Evaluation and Award</b> A. The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and evaluation criteria set forth in the invitation for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the lowest bidder, if a competing bidder located outside of this state is not subject to a transaction privilege or use tax of a political subdivision of this state.	Mohave complies with the rule. Evaluation and award are based solely on the criteria in the IFB. Sales/use tax is not considered in determining the award. See "Basis for award." (pg 6).
B. Awards for procurement of information systems and telecommunications systems shall include as evaluation factors the total life cycle cost and application benefits of the information systems or telecommunications systems.	Mohave complies with the rule. See "Telecommunications & information systems." (pgs 7 & 14). See Appendices E & F.
C. Awards for procurement of earth-moving, material-handling, road maintenance and construction equipment shall include as evaluation factors the total life cycle cost including residual value of the earth-moving, material-handling, road maintenance and construction equipment.	Mohave does not contract for such equipment. Requirement would be added for applicable solicitation.
D. If all bids for a construction project exceed available monies as certified by the school district, and the low responsive and responsible bid does not exceed such monies by more than 5%, the school district may in situations in which time or economic considerations preclude resolicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, to bring the bid within the amount of available monies.	Not applicable to Mohave contracts.
E. A product acceptability evaluation shall be conducted solely to determine whether a bidder's product is acceptable as set forth in the invitation for bids and not whether 1 bidder's product is superior to another bidder's product. Any bidder's offering that does not meet the acceptability requirements shall be rejected as nonresponsive.	Mohave complies with the rule.
F. Bids shall be evaluated to determine which bidder offers the lowest cost to the school district in accordance with the evaluation criteria set forth in the invitation for bids. Only objectively measurable criteria that are set forth in the invitation for bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost and other identifiable costs or life cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the governing board has available concerning future use.	Mohave complies with the rule. See "Basis for award." (pg 6).

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**COMPETITIVE SEALED BIDDING (cont'd)**

<b>RULE</b>	<b>MOHAVE RESPONSE</b>
G. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids unless the bidder is also the lowest bidder as determined under subsection (D) of this Section. This Section does not permit negotiations with any bidder, except as provided in subsection (B).	Mohave complies with the rule.
H. If there are 2 or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by drawing lots.	Mohave complies with the rule.
I. A record showing the basis for determining the successful bidder shall be retained in the official records of the school district.	Mohave complies with the rule. Mohave prepares a written award recommendation for every solicitation. Additional supporting documentation is prepared as determined appropriate.
J. A written notice of award shall be sent to the successful bidder. Unsuccessful bidders may be notified in writing of the award. Notice of award shall be made available to the public.	Mohave complies with the rule. Mohave provides written notification to both successful and unsuccessful bidders. The notices are available for public inspection.
<b>R7-2-1032. Only 1 bid received</b> If only 1 responsive bid is received in response to an invitation for bids, an award may be made to the single bidder if the school district determines that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected in whole or in part as may be specified in the solicitation if it is advantageous to the school district. The reasons for cancellation or rejection shall be made part of the procurement file and: <ol style="list-style-type: none"> <li>1 New bids may be solicited; or</li> <li>2. The proposed procurement may be canceled; or</li> <li>3. If the school district determines that the need for the material or service continues and the acceptance of the 1 bid is not advantageous to the school district, the procurement may then be conducted as follows: <ol style="list-style-type: none"> <li>a. The school district may follow the sole source procurement procedure if R7-2-1053 applies.</li> <li>b. Notwithstanding any other provision of this Article, the school district may make emergency procurements pursuant to R7-2-1056 and R7-2-1057 if an emergency condition exists pursuant to R7-2-1056.</li> </ol> </li> </ol>	Mohave complies with the rule. Mohave prepares a written determination to substantiate any award for a single bid response. The determination complies with the rule.

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**MESC Procurement Rules Review**

**COMPETITIVE SEALED PROPOSALS**

The Arizona Department of Education School District Procurement Rules contain specific requirements for competitive sealed proposals. Mohave has prepared this review of those requirements to assist members in performing due diligence reviews.

<b>RULE</b>	<b>MOHAVE RESPONSE</b>
<p><b>R7-2-1041. Competitive sealed proposals</b></p> <p>A. If, under this Section, the governing board determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the school district, a contract may be entered into by competitive sealed proposals. The governing board may make a class determination that it is either not practicable or not advantageous to the school district to procure specified types of materials or services by competitive sealed bidding. The competitive sealed proposal method may not be used for construction contracts. The governing board may modify or revoke a class determination at any time.</p>	<p>Mohave complies with the rule. Prior to using the competitive sealed proposal method of source selection, Mohave’s executive board makes the determination that competitive sealed bidding is not practicable or advantageous. Class determinations are used and remain in effect until revised or rescinded by the executive board.</p>
<p>B. If competitive sealed bidding is neither practicable or advantageous, then competitive sealed proposals may be used if it is necessary to:</p> <ol style="list-style-type: none"> <li>1. Use a contract other than a fixed-price type;</li> <li>2. Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals;</li> <li>3. Afford offerors an opportunity to revise their proposals;</li> <li>4. Compare the different price, quality, and contractual factors of the proposals submitted; or</li> <li>5. Award a contract in which price is not the determining factor.</li> </ol>	<p>Mohave complies with the rule. The following factors are addressed as appropriate in the MESC executive board’s written determinations authorizing use of RFPs.</p>
<p><b>R7-2-1042. Request for Proposals</b></p> <p>A. Competitive sealed proposals shall be solicited through a request for proposals. A request for proposals shall set forth those factors listed in R7-2-1024(B) that are applicable and shall also state:</p> <ol style="list-style-type: none"> <li>1. The type of services required and a description of the work involved;</li> <li>2. The type of contract to be used;</li> <li>3. An estimated duration that the service will be required;</li> <li>4. That cost or pricing data is required;</li> <li>5. That offerors may designate as proprietary portions of the proposals;</li> <li>6. That discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award;</li> <li>7. The minimum information that the proposal shall contain;</li> <li>8. The closing date and time of receipt of proposals; and</li> <li>9. The relative importance of price and other evaluation factors.</li> </ol>	<p>Mohave complies with the rule. See the section &amp; page of the RFP specified below.</p> <p>Pg 1 and Scope of Work &amp; Specifications            Contract type (pg 8)            Contract period (pg 18)            See R7-2-1079-C            Confidential information request (pg 5)            Discussions (pg 5)</p> <p>RFP preparation (pg 3) and Preparation of proposal &amp; proposal format (pgs 12-13),</p> <p>Pg 1            Criteria (pg 7)</p>

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**COMPETITIVE SEALED PROPOSALS (cont'd)**

<b>RULE</b>	<b>MOHAVE RESPONSE</b>
<p>10. Procurement of information systems and telecommunications systems shall include, as criteria in the request for proposal, evaluation factors of the total life cycle cost and application benefits of the information systems or telecommunication systems.</p> <p>11. Procurement of earth-moving, material-handling, road maintenance and construction equipment shall include, as criteria in the request for proposal, evaluation factors of the total life cycle cost including residual value of the earth-moving, material-handling, road maintenance and construction equipment.</p>	<p>Telecommunications &amp; information systems (pg 7) and Appendices F &amp; G.</p> <p>Mohave does not contract for such equipment. Requirement would be added for applicable solicitation.</p>
<p>B. A request for proposals shall be issued at least 14 days before the closing date and time for receipt of proposals unless a shorter time is determined necessary by the school district.</p>	<p>Mohave complies with the rule. RFPs are issued at least 14 days prior to the due date and time. Most are issued for approximately 30 days. See pg 1 of the RFP to find the date of the solicitation and due date and time.</p>
<p>C. Notice of the request for proposals shall be issued in accordance with R7-2-1022.</p>	<p>Mohave complies with the rule. See R7-2-1022 above.</p>
<p>D. Before submission of initial proposals, amendments to requests for proposals shall be made in accordance with R7-2-1026. After submission of proposals, amendments may be made in accordance with R7-2-1036(C).</p>	<p>Mohave complies with the rule. See R7-2-1026 above.</p>
<p><b>R7-2-1043. Pre-proposal conferences</b>  Pre-proposal conferences may be convened in accordance with R7-2-1025.</p>	<p>Mohave complies with the rule. Notice of any pre-proposal conference is provided on pg 1 of the RFP.</p>
<p><b>R7-2-1044. Late proposals, modifications or withdrawals</b>  A. A proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R7-2-1028(B). A best and final offer received after the closing date and time for receipt of best and final offers is late and shall not be considered except under the circumstances set forth in R7-2-1028(B).</p>	<p>Mohave complies with the rule. See "Late offers." (pg 10)</p>
<p>B. A modification of a proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R7-2-1028(B).</p>	<p>Mohave complies with the rule.</p>
<p>C. A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals or a modification or a proposal resulting from discussions during negotiations shall be considered if received by the closing date and time set forth in the amendment or by the closing date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered except under the circumstances set forth in R7-2-1028(B).</p>	<p>Mohave complies with the rule.</p>
<p>D. A proposal may be withdrawn at any time before the closing date and time for receipt of best and final offers. Withdrawal of a proposal after submission of best and final offers is permissible only in accordance with R7-2-1049.</p>	<p>Mohave complies with the rule. See "Withdrawal of proposal." (pg 10)</p>

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**COMPETITIVE SEALED PROPOSALS (cont'd)**

RULE	MOHAVE RESPONSE
<p><b>R7-2-1045. Receipt of proposals</b>  A. Each proposal received shall be stamped with the time and date received and retained in a secure place until the closing date and time for receipt of proposals.</p>	<p>Mohave complies with the rule. Proposals are time and date stamped at time of receipt. All proposals are logged with the time and date received. Proposals are stored unopened in a secure place.</p>
<p>B. Proposals shall be opened publicly at the time and place designated in the request for proposals in the presence of witnesses. The name of each offeror shall be publicly read and recorded, which record shall be retained by the school district. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. Proposals and modifications shall be shown only to school district personnel having a legitimate interest in them or persons assisting the school district in evaluation.</p>	<p>Mohave complies with the rule. Proposals are opened with one or more witnesses. Everyone attending proposal opening signs in on a log sheet. The public record is available for public inspection. Only the names of respondents are read at the public proposal opening. See "Proposal opening." (pg 11)</p>
<p>C. If only 1 proposal is received in response to a request for proposals, the school district shall follow R7-2-1032.</p>	<p>Mohave complies with the rule. Mohave prepares a written determination to substantiate any award for a single proposal response. The determination complies with the rule. See R7-2-1032 above.</p>
<p><b>R7-2-1046. Evaluation of proposals</b>  A. Proposals shall be based on the evaluation factors set forth in the request for proposals. Specific numerical weighting can be used.</p>	<p>Mohave complies with the rule. See "Basis for award" (pg 6), "Criteria" (pg 7) and "Weighted evaluation" (pg 7)</p>
<p>B. For the purpose of conducting discussions, the school district shall determine that proposals are either acceptable for further consideration or unacceptable. A determination that a proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the procurement file. If the school district determines an offeror's proposal is unacceptable, the school district shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to amend its offer.</p>	<p>Mohave complies with the rule. See "Discussions." (pg 5)  Written documentation is prepared and maintained in the procurement file.</p>
<p><b>R7-2-1047. Discussions with individual offerors</b>  Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before award for the purpose of obtaining best and final offers. The school district shall establish procedures and schedules for conducting discussions. Disclosure of 1 offeror's price to another and any information derived from competing proposals is prohibited. Any clarification of a proposal by the offeror shall be in writing. The school district shall keep a detailed record of all discussions.</p>	<p>Mohave complies with the rule. See "Discussions." (pg 5)</p>

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**COMPETITIVE SEALED PROPOSALS (cont'd)**

RULE	MOHAVE RESPONSE
<p><b>R7-2-1048. Best and final offers</b>            If discussions are conducted pursuant to R7-2-1047, the school district shall issue a written request for best and final offers. The request shall set forth the date, time and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the school district makes a determination that it is advantageous to the school district to conduct further discussions or change the school district's requirements. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.</p>	<p>Mohave complies with the rule. Formal Requests for Best and Final Offers are issued, received, opened, and evaluated in accordance with the rules.</p>
<p><b>R7-2-1049. Mistakes in proposals</b>            A. Prior to the time and date set for receipt of best and final offers, any offeror may withdraw the proposal or correct any mistake by modifying the proposal.</p>	<p>Mohave complies with the rule.</p>
<p>B. After receipt of best and final offers, an offeror may withdraw a proposal or correct a mistake in accordance with R7-2-1030(A) through R7-2-1030(F).</p>	<p>Mohave complies with the rule.</p>
<p><b>R7-2-1050. Contract Award</b>            A. The school district shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the school district based on the factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal if a competing offeror located outside this state is not subject to a transaction privilege or use tax of a political subdivision of this state. The procurement file shall contain the basis on which the award is made.</p>	<p>Mohave complies with the rule. See "Basis of award." (pg 6) Mohave prepares a written award recommendation for every solicitation. Additional supporting documentation is prepared as determined appropriate.</p>
<p>B. Awards for procurement of information systems and telecommunications systems shall include as evaluation factors the total life cycle cost and application benefits of the information systems or telecommunications systems.</p>	<p>Mohave complies with the rule. See "Telecommunications and information systems" (pg 7) and Appendices F &amp; G.</p>
<p>C. Awards for procurement of earth-moving, material-handling, road maintenance and construction equipment shall include as evaluation factors the total life cycle cost including residual value of the earth-moving, material-handling, road maintenance and construction equipment.</p>	<p>Mohave does not contract for such equipment. Requirement would be added for applicable solicitation.</p>
<p>D. Unsuccessful offerors may be notified in writing of the award.</p>	<p>Mohave provides written notification to both successful and unsuccessful bidders. The notices are available for public inspection.</p>
<p>E. After contract award the proposals shall be open for public inspection, except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with R7-2-1005.</p>	<p>Mohave complies with the rule. See "Public record" and "Confidential information request." (pg 5) Confidential information requests are reviewed in accordance with R7-2-1005.</p>

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## MESC Procurement Rules Review

### PROCUREMENT OF CONSTRUCTION

The Arizona Department of Education School District Procurement Rules contain specific requirements for procurement of construction. Mohave has prepared this review of those requirements to assist members in performing due diligence reviews.

Mohave IFBs for construction contain General Terms and Conditions *and* Special Terms and Conditions for Construction. References below refer to the Special Terms and Conditions for Construction, unless otherwise noted. Page numbers listed below are applicable to IFBs for construction.

RULE	MOHAVE RESPONSE
<p><b>R7-2-1111. Bid security</b></p> <p>A. Bid security shall be required for all competitive sealed bidding for construction contracts if the price is estimated by the school district to exceed the amount established by A.R.S. § 15-213(A).</p>	<p>Mohave complies with the rule. See “Bid security requirement.” (pg 19)</p>
<p>B. Invitations for bid on school district construction contracts shall require the submission of bid security in an amount equal to at least 10% of the bid, at the time the bid is submitted. If a bidder fails to submit the required bid security with the bid, the bid shall be rejected except as provided by R7-2-1111(D).</p>	<p>Mohave complies with the rule. Because Mohave contracts do not specify projects, base bid amount does not exist to determine amount of bid security. Mohave sets bid security amount. See “Amount of bid security.” (pg 19)</p>
<p>C. Acceptable bid security shall be limited to:</p> <ol style="list-style-type: none"> <li>1. An annual or 1-time bid bond underwritten by a surety company licensed to issue bid bonds in this state; or 2. A certified or cashier's check.</li> </ol>	<p>Mohave complies with the rule. See “Form of bid security.” (pg 19)</p>
<p>D. The school district may determine that compliance with bid security may be waived if:</p> <ol style="list-style-type: none"> <li>1. Only 1 bid is received and there is not sufficient time to rebid;</li> <li>2. The amount of the bid security submitted, although less than the amount required by the invitation for bids, is equal to or greater than the difference between the apparent low bid and the next higher acceptable bid; or</li> <li>3. The bid security is inadequate as a result of modifying or correcting a bid in accordance with R7-2-1027 or R7-2-1030, if the bidder increases the amount of security to required limits within 2 days after notification.</li> </ol>	<p>Mohave complies with the rule.</p>
<p>E. After the bids are opened, they are irrevocable for the period specified in the invitation for bids, except as provided in R7-2-1030. If a bidder is permitted to withdraw its bid before award, no action may be had against the bidder or the bid security.</p>	<p>Mohave complies with the rule. See General Ts &amp; Cs, “OFFER ACCEPTANCE PERIOD/ WITHDRAWAL.” (pg 10)</p>
<p><b>R7-2-1112. Contract performance and payment bonds</b></p> <p>A. The following bonds or security are required &amp; become binding on the parties on the execution of the contract if the value of a construction award exceeds the amount established by A.R.S. §15-213(A):</p> <ol style="list-style-type: none"> <li>1. A performance bond satisfactory to the school district, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the school district, in an amount equal to 100% of the price specified in the contract.</li> <li>2. A payment bond satisfactory to the school district, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the school district, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.</li> </ol>	<p>Mohave complies with the rule. See “Performance bond requirement” &amp; “Payment bond requirement.” (pg 22)</p>

**MESC Procurement Rules Review**  
**PROCUREMENT OF CONSTRUCTION**

RULE	MOHAVE RESPONSE
B. The performance bond and the payment bond shall be delivered by contractor to school district at the time contract is executed. If contractor fails to deliver required performance or payment bond, contractor's bid shall be rejected, bid security shall be enforced, and award of contract shall be made pursuant to this Title.	Mohave complies with the rule. See "ISSUING PERFORMANCE AND PAYMENT BONDS." (pg 22)
C. This Section shall not be construed to limit the authority of the school district to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (A) of this Section.	
D. Any person who furnishes labor or material to contractor or its subcontractors for the work provided in contract, in respect of which payment bond is furnished under this Section, and who has not been paid in full within 90 days from date on which the last of the labor was performed or material was supplied by person for whom the claim is made has the right to sue on the payment bond for any amount unpaid at the time suit is instituted and to prosecute the action for amount due the person. However, any person who has a contract with a subcontractor of contractor, but no express or implied contract with contractor furnishing payment bond, has a right of action on payment bond on giving contractor, only, a written preliminary 20-day notice as provided for in A.R.S. § 33-992.01, subsection (C)(1), (2), (3), and (4) and subsections (D), (E), and (I), and upon giving written notice to contractor within 90 days from date on which last of the labor was performed or material was supplied by the person for whom the claim is made. The person shall state in notice the amount claimed and name of party for whom labor was performed or to whom material was supplied. Notice shall be personally served or sent by registered mail, postage prepaid, in an envelope addressed to contractor at any place contractor maintains an office or conducts business.	
<b>R7-2-1113. Bond forms</b> Bid bonds, performance bonds, and labor and material payment bonds required by this Article shall be executed on forms substantially equivalent to SPO 301, SPO 302, and SPO 303, respectively, which are attached to this Article, marked as Exhibits A, B and C.	Mohave complies with the rule. Samples of the referenced SPO forms are included in the IFB as attachments.
<b>R7-2-1114. Contract Payment Retention and Substitute Security</b> A. Contract payment retention. Ten percent of all construction contract payments shall be retained by the school district as insurance of proper performance of the contract or, at the option of the contractor, a substitute security may be provided by the contractor pursuant to this Section. The contractor is entitled to all interest from any such substitute security. When the contract is 50% completed, 1/2 of the amount retained or securities substituted pursuant to this Section shall be paid to the contractor upon 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 50% completed, no more than 5% of the amount of any subsequent progress payments made under the contract shall be retained providing the contractor is making satisfactory progress on the project, except if at any time the governing board determines satisfactory progress is not being made, 10% retention shall be reinstated for all progress payments made under the contract subsequent to the determination.	Mohave complies with the rule. See "RETENTION." (pgs 23-24)

**MESC Procurement Rules Review**  
**PROCUREMENT OF CONSTRUCTION (cont'd)**

<b>RULE</b>	<b>MOHAVE RESPONSE</b>
<p>B. The form of substitute security. The form of substitute security is limited to the following:</p> <ol style="list-style-type: none"> <li>1. An assignment of time certificates of deposit by financial institutions licensed by this state;</li> <li>2. Share certificate of a savings and loan institution or credit union authorized to transact business in this state; or</li> <li>3. Security issued or guaranteed as to principal and interest by: <ol style="list-style-type: none"> <li>a. The United States;</li> <li>b. The state;</li> <li>c. Counties, municipalities and school districts within the state.</li> </ol> </li> </ol>	<p>Mohave complies with the rule. See "RETENTION." (pgs 23-24)</p>
<p>C. Conditions for use of substitute security.</p> <ol style="list-style-type: none"> <li>1. A contractor may submit substitute security to replace contract payment retention if: <ol style="list-style-type: none"> <li>a. The use of substitute security is requested of the school district or designee for work performed under the contract. The contractor shall have the option of submitting the substitute security: <ol style="list-style-type: none"> <li>i. Prior to each progress payment in an amount of no less than 10% of each progress payment; or</li> <li>ii. Once, prior to the 1st progress payment in an amount no less than 10% of the total contract amount.</li> </ol> </li> <li>b. The interest earned on such security shall accrue to the benefit of the contractor, but shall be retained until the school district has approved completion and acceptance of all work to be performed under the contract;</li> <li>c. The term of such security shall not mature until after the estimated contract completion date; and</li> <li>d. The security shall mature no later than 1 year after the estimated contract completion date.</li> </ol> </li> <li>2. The substitute security shall not be released without written approval by the school district.</li> <li>3. A contractor may submit a single substitute security for more than 1 project provided that: <ol style="list-style-type: none"> <li>a. The amount of such security is sufficient to cover the aggregate retention amount;</li> <li>b. The school district determines that such single substitute security is advantageous to the school district; and</li> <li>c. Such security complies with the requirements of subsection (C)(1) of this Section.</li> </ol> </li> </ol>	<p>Mohave complies with the rule. See "RETENTION." (pgs 23-24)</p>
<p>D. Any retention shall be paid or substitute security shall be returned to the contractor within 60 days after final completion and acceptance of work under the contract. Retention of payments by a school district longer than 60 days after final completion and acceptance requires a specific written finding by the governing board of the reasons justifying the delay in payment. No school district may retain any monies after 60 days which are in excess of the amount necessary to pay the expenses the governing board reasonably expects to incur in order to pay or discharge the expenses determined in the finding justifying retention of monies.</p>	<p>Mohave complies with the rule. See "RETENTION." (pgs 23-24)</p>
<p>E. School district shall not accept substitute security unless accompanied by signed and acknowledged waiver of any right or power of obligor to set off any claim against either school district or contractor in relationship to security assigned. In any instance in which school district accepts substitute security as provided in this Section, any subcontractor undertaking to perform any part of contract is entitled to provide such security to contractor.</p>	<p>Mohave complies with the rule. See "RETENTION." (pgs 23-24)</p>

**MESC Procurement Rules Review**  
**PROCUREMENT OF CONSTRUCTION (cont'd)**

RULE	MOHAVE RESPONSE
<p><b>R7-2-1115. Progress Payments</b></p> <p>A. Progress payments may be made by the school district to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding month if the contractor agrees to adhere to the provisions of A.R.S. §41-2577(B), (D), and (F). Payment shall be made within 30 days after receipt of the estimate of the work performed, except that a percentage of all estimates shall be retained as provided in R7-2-1114. The estimate of the work shall be deemed received by the school district on submission of the estimate of the work to the school district or a person designated by the school district for the submission, review or approval of the estimate of the work. An estimate of the work submitted under this Section shall be considered approved and certified after 7 days from the date of submission unless before that time the school district or designee 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 school district may withhold an amount from the progress payment sufficient to pay the expenses the school district reasonably expects to incur in correcting the deficiency set forth in the written finding. No contract for construction may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this Section. 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 pursuant to R7-2-1114.</p>	<p>Mohave complies with the rule.  See "PROGRESS PAYMENTS." (pg 22)</p>
<p>B. A subcontractor may notify the school district, in writing, requesting that the subcontractor be notified by the school district in writing within 5 working days from payment of each progress payment made to the contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.</p>	<p>Mohave complies with the rule.  See "PROGRESS PAYMENTS." (pg 22)</p>
<p>C. If any payment to a contractor is delayed after the date due, interest shall be paid at the rate of 1% per month, or a fraction of a month, on such unpaid balance as may be due.</p>	<p>Mohave complies with the rule.  See "PROGRESS PAYMENTS." (pg 22)</p>

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