

# NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

## NOTICE OF FINAL RULEMAKING

### TITLE 2. ADMINISTRATION

#### CHAPTER 7. DEPARTMENT OF ADMINISTRATION FINANCE DIVISION, PURCHASING OFFICE

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3154.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 8, 2012.*

[R12-226]

#### PREAMBLE

<u>1. Articles, Parts, Sections Affected (as applicable)</u>	<u>Rulemaking Action</u>
R2-7-101	Amend
R2-7-B309	Amend
R2-7-C309	Amend
R2-7-C311	Amend
R2-7-C314	Amend
R2-7-C315	Amend
R2-7-C316	Amend
R2-7-D303	Amend
R2-7-E301	Amend
R2-7-E303	Amend
R2-7-F307	Amend
R2-7-G301	Amend
R2-7-404	New Section
R2-7-501	Amend
R2-7-503	Amend
R2-7-504	Amend
R2-7-505	Amend
R2-7-511	Amend
R2-7-607	New Section
R2-7-608	New Section
R2-7-A902	Amend
R2-7-A908	Amend
Article 13	Repeal
R2-7-1301	Repeal

**2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. § 41-2511(A)

Implementing statutes: A.R.S. §§ 41-2511, 41-2501 through 41-2504, 41-2512 through 41-2516, 41-2531 through 41-2559, 41-2561 through 41-2568, 41-2571 through 41-2579, 41-2580, 41-2585, 41-2586, 41-2591, 41-2601 through 41-2607, 41-2611 through 41-2617, 41-2631 through 41-2637, 41-2661, 41-2662, and 41-2671 through 41-2673

**3. The effective date of the rules:**

January 7, 2013

- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

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Not applicable

- b. If the agency selected a date later than 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable

- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 18 A.A.R. 1502, June 29, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 2110, August 31, 2012

- 5. The agency's contact person who can answer questions about the rulemaking:**

Name: Jean Clark, State Procurement Administrator

Address: Department of Administration – State Procurement Office  
100 N. 15th Ave., Suite 201  
Phoenix, AZ 85007

Telephone: (602) 542-9136

Fax: (602) 542-5508

E-mail: [Jean.Clark@azdoa.gov](mailto:Jean.Clark@azdoa.gov)

or

Name: Rob Smook, ADOA Rules Administrator

Address: Department of Administration – Fleet Management Office  
1501 W. Madison St.  
Phoenix, AZ 85007

Telephone: (602) 542-6161

Fax: (602) 542-3125

E-mail: [Robert.Smook@azdoa.gov](mailto:Robert.Smook@azdoa.gov)

- 6. An agency's justification and reason why the rules should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The purpose of this rulemaking is to address issues identified in the previous five-year review report approved by the Governor's Regulatory Review Council in February 2011. Other changes may be made to improve processes. Additionally, the rulemaking will update the rules and bring them into conformance with current practice. The subject matter of these rules is the procurement and management of all materials, services and construction for the state of Arizona. The statutes and the rules are based on the American Bar Association Model Procurement Code and are commonly referred to as the "Arizona Procurement Code."

- 7. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 9. The summary of the economic, small business, and consumer impact:**

**Identification of the Final Rule Package:**

The proposed rulemaking governs the procurement and management of all materials, services, and construction for the State of Arizona. The rules are based on the American Bar Association's Model Procurement Code and known as the "Arizona Procurement Code."

**Identification of the Impacted Parties:**

The parties affected by this rulemaking include: state government officials and managers, state government procurement employees, suppliers including small businesses, minority and women owned businesses, non-profit organizations that provide services to state government, associations that represent various business groups, attorneys, local government units including cities, counties, and school districts.

**Benefits/Costs of these rule changes:**

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The benefits of this rulemaking are greater efficiency in public procurement, reduced operating cost of public procurement, increased opportunities for small, minority and women-owned businesses, improved understanding and ease of use of rules for government agencies and suppliers and more open access to procurement opportunities and information.

**Probable Impact on Small Business:**

The impact on small businesses should be positive. Small businesses will benefit from more open access to contracting opportunities with the State. In addition, the proposed changes in this rulemaking should provide a better understanding of the rules and their function to small business than do the rules currently in place.

**Probable Effects on State Revenue:**

There should be no immediate measurable impact on state revenues or expenses. The long term effect should be a reduction in costs resulting from greater efficiency in the procurement program and the ability to negotiate lower costs for the state.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

No substantive changes were made to the rules. Based on suggestions from Council staff, minor, non-substantive changes were made to the rules to improve clarity.

**11. An agency's summary of public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The agency received no written comments regarding the rulemaking.

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

Not applicable

**a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable

**b. Whether a federal law is applicable to the subject of the rules, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not applicable

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

Not applicable

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

**14. Whether the rules were previously made, amended or repealed as emergency rules. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

None

**15. The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 7. DEPARTMENT OF ADMINISTRATION

~~FINANCE DIVISION, PURCHASING OFFICE~~ STATE PROCUREMENT OFFICE

ARTICLE 1. GENERAL PROVISIONS

Section  
R2-7-101. Definitions

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

PART B. COMPETITIVE SEALED BIDDING

Section  
R2-7-B309. One Offer Received

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**PART C. COMPETITIVE SEALED PROPOSALS**

Section

- R2-7-C309. Only One Offer Received
- R2-7-C311. Determination of Not Susceptible for Award
- R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers
- R2-7-C315. Final Proposal Revisions
- R2-7-C316. Evaluation of Offers

**PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535**

Section

- R2-7-D303. Request for Quotation Issuance

**PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535**

Section

- R2-7-E301. Sole Source Procurements
- R2-7-E303. Competition Impracticable Procurements

**PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS, LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS**

Section

- R2-7-F307. Late Offers

**PART G. OTHER SOURCE SELECTION**

Section

- R2-7-G301. Request for Information

**ARTICLE 4. SPECIFICATIONS**

Section

- ~~R2-7-404. Repealed Conflict of Interest~~

**ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES**

Section

- R2-7-501. Procurement of Specified Professional and Construction Services
- R2-7-503. Procurement of Construction Using Alternate Project Delivery Method
- R2-7-504. Notice
- R2-7-505. Selection Committee
- R2-7-511. Individual Job Order Contracting

**ARTICLE 6. CONTRACT CLAUSES**

Section

- R2-7-607. Mandatory Statewide Contracts
- R2-7-608. Multiple Source Contracts

**ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES**

**PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS**

Section

- R2-7-A902. Stay of Procurements During the Protest
- R2-7-A908. Agency Report

**~~ARTICLE 13. ONLINE BIDDING REPEALED~~**

Section

- ~~R2-7-1301. Online Solicitation Process Repealed~~

**ARTICLE 1. GENERAL PROVISIONS**

**R2-7-101. Definitions**

In this Chapter, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or

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whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.

2. "Agency chief procurement officer" means the ~~person~~ procurement officer within a ~~purchasing agency, as identified by the state governmental agency head~~ state governmental unit, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other ~~procurement officer or~~ person within a state governmental unit who does not have this written delegation of authority.
3. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. "Alternate project delivery methods" means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. "Arizona Procurement Code" means A.R.S. Title 41, Chapter 23 and ~~A.A.C. Title 2,~~ this Chapter 7.
6. "Arizona state contract" means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. "Award" means a determination by the state that it is entering into a contract with one or more offerors.
8. "Bid" means an offer in response to solicitation.
9. "Bidder" means "offeror" as defined in R2-7-101(36).
10. "Brand name or equal specification" means a written description that uses one or more manufacturers' product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
11. "Brand name specification" means a written description limited to a list of one or more items by manufacturers' product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
12. "Clergy" ~~means a minister of a religion~~ includes the same persons described in A.R.S. § 32-3272(3).
13. "Competitive range" ~~means the range determined on the basis of the criteria stated in the solicitation and shall include all offers that have a reasonable chance of being selected for award.~~ is a range determined by the procurement officer on the basis of the criteria stated in the solicitation and an initial review of the proposals submitted. Those proposals that are susceptible for award after the initial review of all original proposals in accordance with the evaluation criteria and a comparison and ranking of original proposals shall be in the competitive range. Those proposals that have no reasonable chance for award when compared on a relative basis with more highly ranked proposals will not be in the competitive range. Proposals to be considered within the competitive range must, at a minimum, demonstrate the following:
  - a. Affirmative compliance with mandatory requirements designated in the solicitation.
  - b. An ability to deliver goods or services on terms advantageous to the state sufficient to be entitled to continue in the competition.
  - c. That the proposal is technically acceptable as submitted.
14. "Component" means a part of a manufactured product.
15. "Contract amendment" means a written modification of a contract under A.R.S. § 41-2503(8) or a unilateral exercise of a right contained in the contract.
16. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.
17. "Cost-plus-a-percentage-of-cost contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
18. "Day" means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. "Debarment" means an action taken by the director under R2-7-C901 that prohibits a person from participating in the state procurement process.
20. "Defective data" means data that is inaccurate, incomplete, or outdated.
21. "Dentist" means a person licensed under A.R.S. Title 32, Chapter 11.
22. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
23. "Discussion" means "negotiation" as defined in R2-7-101(34).
24. "Eligible procurement unit" means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency for disabled individuals as defined in A.R.S. § 41-2631, that is eligible under a cooperative agreement to use Arizona state contracts.
25. "Enterprise Procurement Services" means state procurement office as defined in R2-7-101(50).
26. "Filed" means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner

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- specified by the Arizona Procurement Code or a solicitation.
27. "Finished goods" means units of a manufactured product awaiting sale.
  28. "Force account" as used in A.R.S. § 41-2572, means work performed by the state's regularly employed personnel.
  29. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
  30. "In writing" has the same meaning as "written" or "writing" in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
  31. "Interested party" means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
  32. "Legal counsel" means a person licensed as an attorney by the Arizona Supreme Court.
  33. "May" means something is permissive.
  34. "Negotiation" means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by ~~these rules or statutes~~ this Chapter.
  35. "Offer" means a response to a solicitation.
  36. "Offeror" means a person ~~that~~ who responds to a solicitation.
  37. "Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
  38. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
  39. "Procurement file" means the official records file of the director whether located in the office of the director or at a public procurement unit. The procurement file shall include (electronic or paper) the following:
    - a. List of notified vendors.
    - b. Final solicitation.
    - c. Solicitation amendments.
    - d. Bids and offers.
    - e. Final proposal revisions.
    - f. Discussions.
    - g. Clarifications.
    - h. Final evaluation reports, and
    - i. Additional information, if requested by the agency chief procurement officer and approved by the state procurement administrator.
  40. "Procurement request" means the document that initiates a procurement.
  41. "Proposal" means an offer submitted in response to a solicitation.
  42. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
  43. "Raw materials" means goods, excluding equipment and machinery, purchased for use in manufacturing a product.
  44. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
  45. "Shall" means something is mandatory.
  46. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than \$4 million for the last complete fiscal year.
  47. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
  48. "Source selection method" means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.
  49. "State procurement administrator" means the individual appointed by the director as a chief procurement officer for a state, or a state procurement administrator's authorized designee. A different title may be used for this position.
  50. "State procurement office" means an office that acts under the authority delegated to the state procurement administrator.
  51. "Suspension" means an action taken by the director under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
  52. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

PART B. COMPETITIVE SEALED BIDDING

**R2-7-B309. One Offer Received**

If only one offer is received in response to a solicitation, the agency chief procurement officer shall review the offer and either:

1. Award the contract to the offeror and prepare a written determination that:
  - a. The price submitted is fair and reasonable under R2-7-702~~;~~
  - b. The offer is responsive~~;~~ and
  - c. The offeror is responsible~~;~~ or
2. Reject the offer and:
  - a. Resolicit for new offers~~;~~
  - b. Cancel the procurement~~;~~ or
  - c. Use a different source selection method authorized under the Arizona Procurement Code.

PART C. COMPETITIVE SEALED PROPOSALS

**R2-7-C309. Only One Offer Received**

If only one offer is received in response to a solicitation, the agency chief procurement officer shall ~~either~~ review the offer and either:

1. Award the contract to the offeror and prepare a written determination that:
  - a. The price submitted is fair and reasonable pursuant to R2-7-702; and
  - b. The offeror is ~~responsible~~ responsive; ~~or~~ and
  - c. The offeror is responsible; or
2. Reject the offer and:
  - a. Resolicit for new offers;
  - b. Cancel the procurement; or
  - c. Use a different source selection method authorized under the Arizona Procurement Code.

**R2-7-C311. Determination of Not Susceptible for Award**

- A. An agency chief procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award or not within the competitive range. The agency chief procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
  1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
  2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
  3. The offer is not susceptible for award or is not within the competitive range in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award or is in the competitive range, the offer should be included for further consideration.
- B. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award or not within the competitive range, unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors.

**R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers**

- A. An agency chief procurement officer shall establish procedures and schedules for conducting negotiations. The agency chief procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.
- B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the ~~offeror~~ chief procurement officer shall confirm the negotiations in writing and provide to the offeror.
- C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be in the competitive range or reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.
- D. An agency chief procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the state based on the requirements and the evaluation factors set forth in the solicitation.
- E. Responsible offerors determined to be susceptible for award and within the competitive range, with which negotiations have been held, may revise their offer in writing during negotiations.
- F. An offeror may withdraw an offer at any time before the final proposal revision due date and time by submitting a written request to the agency chief procurement officer.

**R2-7-C315. Final Proposal Revisions**

- A. An agency chief procurement officer shall request written final proposal revisions from any offeror with whom negotiations have been conducted, unless the offeror has been determined not within the competitive range or not susceptible for

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award under R2-7-C311 or nonresponsible under R2-7-C312. The agency chief procurement officer shall include in the written request:

1. The date, time, and place for submission of final proposal revisions; and
  2. A statement that if offerors do not submit a written notice of withdrawal or a written final proposal revision, their immediate previous written proposal revision will be accepted as their final proposal revision.
- B.** The agency chief procurement officer shall request written final proposal revisions only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.
- C.** If an apparent mistake, relevant to the award determination, is discovered after opening of final proposal revisions, the agency chief procurement officer shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
  2. Acknowledge that a mistake was made, and include the following in a written response:
    - a. Explanation of the mistake and any other relevant information;
    - b. A request for correction including the corrected offer or a request for withdrawal; and
    - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- D.** An offeror who discovers a mistake in their final proposal revision may request withdrawal or correction in writing, and shall include the following in the written request:
1. Explanation of the mistake and any other relevant information;
  2. A request for correction including the corrected offer or a request for withdrawal; and
  3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- E.** In response to a request made under subsections (C) or (D), the agency chief procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the state. If an offeror does not provide written confirmation of the final proposal revision, the agency chief procurement officer shall make a written determination that the most recent written proposal revision submitted is the final proposal revision.

**R2-7-C316. Evaluation of Offers**

- A.** An agency chief procurement officer shall evaluate offers and final proposal revisions based on the evaluation criteria contained in the request for proposals. The agency chief procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.
- B.** An agency chief procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the agency chief procurement officer. This evaluation report shall supersede all previous draft evaluations or evaluation reports. The agency chief procurement officer may:
1. Accept or reject the findings of the evaluation committee;
  2. Request additional information from the evaluation committee; or
  3. Replace the evaluation committee.
- C.** The agency chief procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

**PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535**

**R2-7-D303. Request for Quotation Issuance**

The agency chief procurement officer shall issue the request for quotation by ~~one of these methods:~~ distributing the request for quotation to a minimum of three small businesses. The agency chief procurement officer shall rotate suppliers invited to submit quotations. The agency chief procurement officer may cancel the request for quotation at any time.

1. ~~Post the request for quotation on the state procurement office's centralized electronic system indicating the date which offers are due. The request for quotation shall be posted for a reasonable time as determined by the agency chief procurement officer based on the needs of the purchasing agency.~~
2. ~~Distribute the request for quotation to a minimum of three small businesses. The agency chief procurement officer shall rotate suppliers invited to submit quotations and shall invite at least one small minority- or small women-owned business enterprise to submit a quote. If the agency chief procurement officer is unable to locate a small minority- or small women-owned business enterprise, the agency chief procurement officer shall document in the procurement file.~~
3. ~~The agency chief procurement officer may cancel the request for quotation at any time by making a written determination that cancellation is advantageous to the state.~~

**PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535**

**R2-7-E301. Sole Source Procurements**



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- A. For the purposes of this Section, the term “sole-source procurement” means a material or service procured without competition when:
  - 1. There is only a single source for the material or service; or
  - 2. No reasonable alternative source exists.
- B. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit a written request for approval to procure from a sole source to the state procurement administrator before proceeding. The request shall include the following information:
  - 1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists;
  - 2. The name of the proposed supplier;
  - 3. The duration and estimated total dollar value of the proposed procurement;
  - 4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702; and
  - 5. A description of efforts made to seek other sources.
- C. The state procurement administrator shall ~~post the request on the state procurement office web site and~~ send notice to registered vendors on the electronic system to invite comments on the sole-source request for ~~five~~ three working days. Following this period, the state procurement administrator shall either:
  - 1. Issue written approval, with any conditions or restrictions;
  - 2. Request additional information from the agency chief procurement officer; or
  - 3. Deny the request if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.
- D. If the sole-source procurement is authorized or approved, the agency chief procurement officer shall negotiate a contract advantageous to the state.
- E. The agency chief procurement officer shall keep a record of all sole-source procurements pursuant to A.R.S. § 41-2551.

**R2-7-E303. Competition Impracticable Procurements**

- A. For the purposes of this Section, “competition impracticable” means a procurement requirement exists which makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R2-7-E302. Procurements with a documented lack of available vendors in the marketplace and which require an open and continuous availability of offerors may be procured by this method.
- B. An agency chief procurement officer seeking a competition impracticable procurement shall obtain the approval of the state procurement administrator before proceeding. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202.
- C. The agency chief procurement officer shall submit a written request for approval containing the following:
  - 1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest;
  - 2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
  - 3. An explanation of why the proposed procurement process is advantageous to the state; and
  - 4. The scope, duration, and estimated total dollar value of the procurement need.
- D. The state procurement administrator shall:
  - 1. Issue written approval, with any conditions or restrictions;
  - 2. Request additional information from the agency chief procurement officer; or
  - 3. Deny the request.
- E. Before modifying the scope, duration, or cost of an approved competition impracticable procurement, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.
- F. The agency chief procurement officer shall keep a record of all competition impracticable procurements as required by A.R.S. § 41-2551.

**PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS, LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS**

**R2-7-F307. Late Offers**

- A. If a specific offer due date and time has been identified in the solicitation, the procurement officer shall reject any offer received after the specified offer due date and time.
  - 1. The procurement officer shall accept a late offer if the document is received before contract award or it would have been received by the offer due date and time but for the action or inaction of state personnel directly serving the purchasing agency.
  - 2. Upon receiving a late offer, the procurement officer shall:
    - a. If the document is hand delivered, refuse to accept the delivery; or
    - b. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late

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receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.

3. The procurement officer shall document a late offer in the procurement file; with as much information as available.
- B.** If the solicitation has a designated, continuous day and time for offer opening and an offer is received after the day and time for offer opening, the procurement officer shall accept and log in the offer for the next scheduled day and time for offer opening.

**PART G. OTHER SOURCE SELECTION**

**R2-7-G301. Request for Information**

An agency chief procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. ~~To the extent allowed by law, information~~ Information contained in a response to a request for information ~~may shall~~ be considered confidential until the procurement process is concluded or two years, whichever occurs first unless authorized by the state procurement administrator.
3. There is no required format to be used for requests for information.

**ARTICLE 4. SPECIFICATIONS**

**R2-7-404. Repealed Conflict of Interest**

- A.** No person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the utilization of those specifications, plans or scopes of work.
- B.** The state procurement administrator may waive the restriction set forth in subsection (A) of this Section if the state procurement administrator determines in writing that the rule's application would not be in the state's best interest. The determination shall state the specific reasons that the restriction in subsection (A) of this Section has been waived.

**ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES**

**R2-7-501. Procurement of Specified Professional and Construction Services**

- A.** The agency chief procurement officer shall procure specified professional services as defined in A.R.S. §§ ~~41-2578(A) 41-2578, 41-2579 and 41-2581~~ in the following manner:
1. Through existing state contracts if available;
  2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § ~~41-2578 41-2533~~ for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535; procurements not to exceed the amount prescribed in A.R.S. § 41-2535;
  3. ~~In accordance with A.R.S. § 41-2578 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2578(C)(2); or~~
  4. ~~3.~~ May procure services in accordance with A.R.S. §§ 41-2536, 41-2537, or ~~41-2578(C)(2)~~ 41-2581.
- B.** Unless an alternate project delivery method is used as permitted under R2-7-503, the agency chief procurement officer shall procure construction in the following manner:
1. Through existing state contracts if available;
  2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 for single award procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535 or 41-2579 for multiple award procurements;
  3. In accordance with A.R.S. § 41-2533 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or
  4. May procure construction in accordance with A.R.S. §§ 41-2536 or 41-2537 or 2581.
- C.** The agency chief procurement officer shall procure construction through an alternate project delivery method in the following manner:
1. Through existing state contracts if available;
  2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
  3. ~~In accordance with A.R.S. § 41-2578 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or~~
  4. ~~3.~~ May procure construction in accordance with A.R.S. §§ 41-2536, ~~or 41-2537,~~ or 41-2581.

**R2-7-503. Procurement of Construction Using Alternate Project Delivery Method**

The agency chief procurement officer may use an alternate project delivery method if the agency chief procurement officer determines in writing that it is in the best interest of the state pursuant to A.R.S. §§ 41-2578 and 41-2579, based on the following factors:

1. Cost and cost control method; ~~;~~
2. Value engineering; ~~;~~

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3. Market conditions;
4. Schedule;
5. Required specialized expertise;
6. Technical complexity of the project; or
7. Project management.

**R2-7-504. Notice**

- A. The agency chief procurement officer shall provide a copy of a solicitation for specified professional services or construction services to any person who requests a copy of the solicitation.
- B. For procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall provide notice of the procurement in accordance with Part D of Article 3 of this Chapter, unless otherwise authorized pursuant to A.R.S. §§ 41-2536 or 41-2537.
- C. For procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535:
  1. The agency chief procurement officer shall make the solicitation available to prospective offerors registered at the State Procurement Office for the specific material, service, or construction being solicited; and
  2. The agency chief procurement officer shall advertise at least once in a general circulation or industry trade publication. If practicable, the date of the advertisement shall be at least ~~45~~ 14 days before the offer due date.

**R2-7-505. Selection Committee**

- A. The agency chief procurement officer shall appoint a selection committee when required under A.R.S. § 41-2578, ~~41-2579, or 41-2581.~~
- B. For the procurement of specified professional services not estimated to exceed the amount prescribed in A.R.S. § ~~41-2578(C)(2)~~ 41-2581, the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to five members who are appropriately qualified including the agency chief procurement officer as chair.
- C. For the procurement of specified professional services estimated to exceed the amount prescribed in ~~A.R.S. § 41-2578(C)(2)~~ A.R.S. § 41-2578, 41-2579, or 41-2581, ~~the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(2) and shall consist of three to seven members who are appropriately qualified including the agency chief procurement officer as chair.~~

**R2-7-511. Individual Job Order Contracting**

- A. The state procurement administrator may award or authorize an agency chief procurement officer to award job order contracts for job orders estimated to cost \$1,000,000 or less.
- B. An agency chief procurement officer may use job order contracting for individual job orders estimated to cost \$250,000 or less, provided that:
  1. The agency chief procurement officer obtains a cost estimate for the job order, before obtaining a cost proposal from the job order contractor; and
  2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.
- C. When authorized by the state procurement administrator, an agency chief procurement officer may use job order contracting for individual job orders estimated to cost more than \$250,000 or less than or equal to \$1,000,000, provided that:
  1. The agency chief procurement officer obtains a cost estimate for the job order from a person as defined in A.R.S. Title 32, Chapter 1, Article 1 before requesting a cost proposal from the job order contractor; and
  2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.
- D. The agency chief procurement officer may request cost proposals from multiple job order contractors or negotiate with a single job order contractor.
- E. The agency chief procurement officer may authorize contract change orders or amendments that result in the individual job order cost exceeding \$1,000,000 only with authorization from the state procurement administrator.
- F. Upon completion of the job order, the agency chief procurement officer shall document in the contract file a summary of the estimated or final costs and the reasons the award is in the best interests of the state.
- G. Conduct the procurement, as necessary in accordance with R2-7-B302, R2-7-B311, R2-7-B313, and R2-7-B315, unless a modified process is approved by the state procurement administrator.

**ARTICLE 6. CONTRACT CLAUSES**

**R2-7-607. Mandatory Statewide Contracts**

State governmental units shall use existing Arizona state contracts to satisfy their needs for those materials and services covered under such contracts, unless authorized by the state procurement administrator.

**R2-7-608. Multiple Source Contracts**

Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the state or the cooperative procurement members, unless authorized by the state procurement administrator.

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS

**R2-7-A902. Stay of Procurements During the Protest**

- A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the ~~state procurement administrator~~ agency chief procurement officer shall make a written determination to either:
1. Proceed with the award or contract performance; or
  2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state.
- B. The ~~state procurement administrator~~ agency chief procurement officer shall provide the interested party, ~~agency chief procurement officer~~ state procurement administrator, and other interested parties with a copy of the written determination.
- C. The agency chief procurement officer may stay all or part of the procurement if it is determined that there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state. ~~The agency chief procurement officer shall notify the state procurement administrator and all interested parties of the stay in writing. Determination of the stay decision shall be issued no later than the time of issuance of a procurement officer's decision in accordance with R2-7-A903.~~
- D. Should the stay request be denied by the agency chief procurement officer the protestant may request a procurement stay from the state procurement administrator. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the agency chief procurement officer.

**R2-7-A908. Agency Report**

- A. The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within ~~14~~ 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The agency chief procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
1. The appeal;
  2. The offer submitted by the interested party;
  3. The offer of the firm that is being considered for award;
  4. The solicitation, including the specifications or portions relevant to the appeal;
  5. The abstract of offers or relevant portions;
  6. Any other documents that are relevant to the protest; and
  7. A statement by the agency chief procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.
- B. The agency chief procurement officer may submit a written request to the director for an extension of the time period for filing the report as prescribed in subsection (A), identifying the reason for extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The director shall notify the agency chief procurement officer, the state procurement administrator, and the interested party in writing that the time for the submission of the report is extended, providing the date on which the report must be submitted.
- C. The interested party shall file comments on the agency report with the director within 10 days after receipt of the report. The interested party shall provide copies of the comments to the agency chief procurement officer, the state procurement administrator, and other interested parties.
- D. The interested party may submit a written request to the director for an extension of the period for submission of comments, identifying the reasons for the extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments. The director shall notify the agency chief procurement officer and the state procurement administrator of any extension.

**ARTICLE 13. ~~ONLINE BIDDING~~ REPEALED**

**R2-7-1301. ~~Online Solicitation Process~~ Repealed**

- ~~A. The agency chief procurement officer shall submit a written request to procure for a single procurement or group of procurements from the state procurement administrator before proceeding with online bidding as defined in A.R.S. § 41-2671. The request shall include the following information:~~
- ~~1. An estimate of the number of prospective offerors;~~
  - ~~2. A description of the proposed online procurement method to be utilized and an explanation of how this method will foster competition;~~
  - ~~3. An explanation of why the proposed procurement method is advantageous to the state; and~~
  - ~~4. The scope, duration, and estimated total dollar value of the procurement need.~~
- ~~B. The state procurement administrator shall:~~
- ~~1. Issue written approval, with any conditions or restrictions;~~
  - ~~2. Request additional information from the agency chief procurement officer; or~~

3. Deny the request.
- C. Before modifying the scope, duration, or cost of an approved online solicitation process, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.

**NOTICE OF FINAL RULEMAKING**

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

*Editor's Note: The following Notice of Final Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3154.)*

[R12-223]

**PREAMBLE**

- | <b><u>1. Articles, Parts, and Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
|---|---------------------------------|
| R2-8-501  | Amend                           |
| R2-8-502  | Amend                           |
| R2-8-503  | Amend                           |
| R2-8-513  | Amend                           |
| R2-8-518  | Repeal                          |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 38-714(E)(4)  
Implementing statute: A.R.S. § 38-747
- 3. The effective date for the rules:**  
January 6, 2013
- a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**  
Not applicable
- b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**  
Not applicable
- 4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**  
Notice of Rulemaking Docket Opening: 18 A.A.R. 1868, August 3, 2012  
Notice of Proposed Rulemaking: 18 A.A.R. 1818, August 3, 2012  
Notice of Rulemaking Docket Opening: 18 A.A.R. 1922, August 10, 2012  
Notice of Proposed Rulemaking: 18 A.A.R. 1890, August 10, 2012
- 5. The agency's contact person who can answer questions about the rulemaking:**  
Name: Patrick M. Klein, Assistant Director  
Address: ASRS  
3300 N. Central Ave., Suite 1400  
Phoenix, AZ 85012-0250  
Telephone: (602) 240-2044  
Fax: (602) 240-5303  
E-mail: PatK@azasrs.gov  
Web site: www.azasrs.gov
- 6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

**Notices of Final Rulemaking**

At its May 2012 meeting, the ASRS Board voted to repeal R2-8-518, which provides those retiring under ASRS with the option of using a partial lump sum of retirement benefits to purchase service credit, because the Board determined that the partial-lump-sum methodology was having a negative impact on the ASRS trust fund. The repeal will be prospective. The Board is also making conforming changes to other Sections.

This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2012-03 under paragraph (4)(c) of the Order.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Board did not review a study relevant to this rulemaking. It relied exclusively on discussions with its staff and actuary. This rulemaking does not rely on scientific principles or methods.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

The repeal of R2-8-518 will have a positive economic impact on the ASRS trust fund and will not impact any member who has submitted a service purchase request before the effective date of the rule repeal. The only members impacted will be those who submit a service purchase request after the effective date of the rule repeal. Those members will not have the option to use partial lump sum funds as a payment method. The current methodology used to calculate the partial lump sum required to pay for service credit purchased at the time of retirement erroneously credits the retiring individual with the purchased service credit before payment is made. As a result, the partial lump sum payment received is greater and the member has a lower partial lump sum reduction factor applied against the member's annuity because fewer months of partial lump sum are required to make the service credit purchase. Rather than repeal R2-8-518, ASRS could make the methodology actuarially neutral but there is no value in doing so for either ASRS or a retiring individual.

ASRS members will still be able to purchase service credit at the time of retirement using an after-tax check, pre-tax rollover or transfer from certain qualified retirement plans, or qualified termination payments. They can also purchase the service credit before the time of retirement using a pre-tax payroll deduction authorization contract.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

The Board made no changes between the proposed rulemakings and the final rulemaking.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:**

Following an oral proceeding conducted on September 4, 2012, Joseph Brekan of Brekan Financial Group submitted the following comments:

COMMENT	ASRS ANALYSIS	RESPONSE
This rule change affects every Plan member who has service time to purchase but has not done so. This number is in the 100,000+++ range versus the non-impacted members which are only in the thousands.	Data from 2012 show that only 22% of Plan members made a service purchase at the time of retirement and 78% of those made the purchase without using a partial lump-sum payment. Only 5% of those who retired in 2012 used a partial lump-sum, in whole or in part, to make a service purchase at the time of retirement.	No change

*Arizona Administrative Register / Secretary of State*

**Notices of Final Rulemaking**

<p>The rule has been in effect since 2001. All members were told they could use a partial lump sum to make a service purchase at the time of retirement. Now they are having the rug pulled out from under them and their retirement plans have completely changed.</p>	<p>The Board has authority to adopt, amend or repeal rules for the administration of the Plan (See A.R.S. § 38-714(E)(4)). The Board also has a fiduciary responsibility to the Trust fund and all current and retired members of the Plan. The Board has determined that the current rule causes harm to the Trust fund and must be repealed for the Board to fulfill its responsibilities. Any member can still make a service purchase at the time of retirement using an after-tax check, pre-tax rollover or transfer from a qualified retirement plan, or qualified termination payment.</p>	<p>No change</p>
<p>It is completely false to say that current methodology used to calculate the partial lump sum required to pay for service credit purchased at the time of retirement erroneously credits the retiring individual with the purchased credit before payment is made.</p>	<p>In determining the partial lump-sum factor to apply to the monthly retirement benefit that will actuarially reduce the retirement benefit to account for the partial lump-sum distribution, the calculation looks at the age of the member and the number of months needed to approximate the cost of the service purchase. The current calculation methodology applies that partial lump-sum factor to the retirement benefit that includes the service to be purchased.</p>	<p>No change</p>
<p>The partial lump-sum reduction factor does NOT take into account the years of service. It is based on the AGE of the member using the partial lump sum.</p>	<p>Mr. Brekan is correct. However, no one at the Board is claiming or has claimed otherwise. The partial lump-sum reduction factor is not predicated on a member's years of service, only on age and the number of months of retirement payments a member needs to complete a service purchase. But the retirement calculation against which the partial lump-sum factor is applied does include the service to be purchased. And, this is what is causing the inequity.</p>	<p>No change</p>
<p>Where is the math? It's simply a false statement to say that using a partial lump sum costs ASRS money while allowing a rollover to buy the same exact time.</p>	<p>The math is in the table below. It shows that using the current partial lump-sum calculation methodology, a member increases the member's monthly pension benefit by approximately \$22 (the difference between \$1,369.71 and \$1,347.50). In other words, the member used a partial lump-sum distribution from the plan to increase the member's monthly pension benefit. The member didn't earn more, make additional contributions, or work longer but instead used trust fund assets to increase the benefit. The trust fund received no influx of assets to account for the increase in the member's pension benefit. As a result, the current calculation methodology is not actuarially cost neutral. Though this is a simple example, it is representative of exactly what is occurring.</p>	<p>No change</p>

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**Partial Lump Sum (PLS) and Service Purchase Example**

Member DOB = 7/1/1950;      Retirement date = 7/1/2012;      Earned Service = 11 years;  
 Avg. Annual Salary = \$70,000      Service to Purchase = 2 Years      Cost to Purchase = \$26,514.05

<b>Annuity Calculation</b>			
<b>Description</b>	<b>No Service Purchase</b>	<b>Current Method</b>	<b>Exclude years purchased w/ PLS funds from PLS calc</b>
Multiply: Years of Service	11	13	13
Multiply: Multiplier	*0.021	*0.021	*0.021
Multiply: Average Monthly Salary	*\$5,833.33	*\$5,833.33	*\$5,833.33
Equals: Straight Life Benefit pre-PLS	=\$1,347.50	=\$1,592.50	=\$1,592.50
Multiply: PLS Reduction Factor	-	*0.8601	*0.8354
Equals: Straight Life Benefit post-PLS	=\$1,347.50	=\$1,369.71	=\$1,330.37

**Partial Lump Sum (PLS) Calculation**

<b>Description</b>	<b>Current Method</b>	<b>Exclude years purchased w/ PLS funds from PLS calc</b>
Multiply: Straight Life Benefit pre-PLS	\$1,592.50	\$1,347.50***
Multiply: Number of PLS Months	*17	*20
Equals: PLS Benefit	=\$27,072.50	=\$26,950.00

\*\*\* Note: uses 'No Service Purchase'  
 Straight Life Benefit pre-PLS amount



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<p>It is FALSE to say that rather than repeal R2-8-518, ASRS could make the methodology actuarially neutral but there is no value in doing so for either ASRS or a retiring member. In order to change the "methodology," ASRS would have to change the COST of buying the time.</p>	<p>If a partial lump-sum distribution were actuarially neutral, the value of the benefit would not increase with a partial lump-sum service purchase. The best way to convey this concept is with three examples. A member retires and requests a partial lump sum. It is obvious that the on-going monthly pension benefit would be actuarially reduced to account for the value of the partial lump sum distribution. Also, an active member buys eligible service and pays for the service under a method allowed by statute (but non-PLS payment). The member's service is enhanced and the trust is enhanced with the payment for the service with outside monies. Lastly, a member retires and requests a partial lump-sum distribution to pay for a service purchase. Assets flow out of the trust fund and then the same assets flow back into the trust fund. The member's service credit is enhanced but the trust received no increase in assets to pay for that service enhancement.</p> <p>In making the transaction actuarially cost neutral, the resulting on-going monthly benefit would not increase rendering the usefulness of the allowance of the partial lump- sum distribution to purchase service meaningless.</p>	<p>No change</p>
<p>ASRS has SET the costs for how much the time is to buy regardless of the method of payment. They have already changed the cost in several ways. EVERY change they have made since 2001 has been to strengthen the system while hurting the members.</p>	<p>Mr. Brekan is correct that the ASRS Board of Trustees has undertaken several actions to protect the trust, make contribution rates stable, and prevent unintended consequences from harming the viability of the trust. The Board has a fiduciary duty to review the on-going operations and administration of ASRS to enhance, where appropriate, to preserve, when required, and to protect, when warranted.</p>	<p>No change</p>
<p>If they do want to change this rule, they should have to grandfather ALL current contributing members of the system.</p>	<p>As previously indicated, the Board has authority to adopt, amend or repeal rules for the administration of the Plan (See A.R.S. § 38-714(E)(4)). The Board also has a fiduciary responsibility to the Trust fund and all current and retired members of the Plan. The Board has determined that the current rule causes harm to the Trust fund and must be repealed for the Board to fulfill its responsibilities.</p>	<p>No change</p>

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**12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

No permit is required.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Federal law applies to retirement programs including those that an individual might use to purchase service credit. However, there is no federal law specifically applicable to this rulemaking.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

None

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable

**15. The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 5. PURCHASING SERVICE CREDIT

Section

R2-8-501.	Definitions
R2-8-502.	Request to Purchase Service Credit and Notification of Cost
R2-8-503.	Requirements Applicable to All Service Credit Purchases
R2-8-513.	Purchasing Service Credit by Irrevocable Payroll Deduction Authorization
R2-8-518.	<del>Purchasing Service Credit by Partial Lump Sum Retirement Distribution</del> Repealed

ARTICLE 5. PURCHASING SERVICE CREDIT

**R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. No change
2. No change
  - a. No change
  - b. No change
  - c. No change
3. No change
4. No change
5. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change

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12. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
13. No change
14. No change
15. No change
  - a. No change
  - b. No change
16. No change
17. No change
18. No change
19. No change
20. "Forms of payment" means check, cashier's check, money order, Irrevocable Payroll Deduction Authorization, direct rollover, trustee-to-trustee transfer, IRA rollover, ~~partial lump sum distribution~~, and termination pay distribution.
21. No change
22. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
23. No change
24. No change
25. No change
26. No change
27. No change
28. No change
29. No change
30. No change
31. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
32. No change
33. No change
34. No change
35. No change
36. No change
37. No change
38. No change
39. No change
40. No change
41. No change
42. No change
43. No change
44. No change
45. No change
46. No change
47. No change
  - a. No change
  - b. No change
48. No change
49. No change
50. No change

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51. No change

**R2-8-502. Request to Purchase Service Credit and Notification of Cost**

- A. No change
- B. No change
- C. No change
- D. No change
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
    - g. No change
    - h. No change
    - i. No change
    - j. No change
    - ~~k. If the member is retiring and wishes to pay by a partial lump sum retirement distribution, the member's requested retirement date; and~~
    - ~~l.k.~~ No change
  - 3. No change

**R2-8-503. Requirements Applicable to All Service Credit Purchases**

- A. To purchase service credit at the amount provided in an SP invoice, an eligible member shall purchase the service credit by check or money order, or request an Irrevocable Payroll Deduction Authorization, rollover, transfer, or termination pay distribution; ~~or partial lump sum retirement distribution~~ as specified in this Article, by the due date specified on the SP invoice.
- B. No change
  - 1. No change
  - 2. No change
- C. No change
- D. No change
- E. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- F. No change
- G. No change
  - 1. No change
  - 2. No change
  - 3. No change
- H. No change
- I. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change

**R2-8-513. Purchasing Service Credit by Irrevocable Payroll Deduction Authorization**

- A. No change
- B. No change
- C. No change
- D. No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change

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- 2. No change
- E. No change
  - 1. No change
  - 2. No change
  - 3. No change
- F. No change
- G. No change
- H. No change
- I. No change
  - 1. No change
  - 2. No change
  - 3. No change
- J. No change
- K. No change
- L. No change
  - 1. No change
  - 2. No change
  - 3. By requesting a partial lump sum retirement benefit distribution from the ASRS under R2-8-518; or
  - 4.3. No change

**R2-8-518. Purchasing Service Credit by Partial Lump Sum Retirement Distribution Repealed**

- ~~A.~~ An eligible member who retires may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization by partial lump sum retirement distribution. Payment by partial lump sum distribution is applied after all other forms of payment are made.
- ~~B.~~ An eligible member who requests to purchase service at retirement by partial lump sum retirement distribution shall make the request to the ASRS before the eligible member's retirement date, and in no case more than six months before retirement.
- ~~C.~~ Within 30 days of the issue date on the SP invoice or PDA pay-off letter, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form described in R2-8-502(D)(2).
- ~~D.~~ The member shall ensure that the Partial Lump Sum Retirement Distribution section of the Application for Retirement Benefit form is completed and received by the ASRS.
- ~~E.~~ For the purpose of purchasing service credit or paying off an Irrevocable Payroll Deduction Authorization, the information requested on the Application for Retirement Benefit form includes:
  - 1. Member's full name;
  - 2. Member's Social Security number;
  - 3. Member's daytime telephone number;
  - 4. Member's date of birth;
  - 5. The number of partial lump sum months the member elects;
  - 6. Whether the member authorizes the ASRS to increase the number of elected partial lump sum months to an amount necessary to purchase all remaining service, up to a maximum of 36 months;
  - 7. Whether the member intends to transfer funds from the member's partial lump sum distribution option to purchase the service credit;
  - 8. Whether the member intends to purchase a portion of the member's service credit by rollover from another eligible plan or termination pay;
  - 9. Identification number of the irrevocable payroll deduction authorization, if applicable;
  - 10. Amount of partial lump sum to apply to each SP invoice, if applicable;
  - 11. Years of service credit to be purchased for each SP invoice, or all service credit; and
  - 12. Acknowledgement that the member knows the member may not choose to roll over to an eligible plan if the member chooses to roll over to purchase ASRS service credit.
- ~~F.~~ The member shall return the completed Application for Retirement Benefit form to the ASRS.

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NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
MEDICARE COST SHARING PROGRAM

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3154) The Governor's Office authorized the notice to proceed through the rulemaking process on May 24, 2012.*

[R12-224]

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action:</u>
R9-29-101	Amend
R9-29-102	Repeal
R9-29-201	Amend
R9-29-202	Amend
R9-29-203	Repeal
R9-29-203	Renumber
R9-29-203	Amend
R9-29-204	Repeal
R9-29-204	New Section
R9-29-205	Repeal
R9-29-205	Renumber
R9-29-205	Amend
R9-29-206	Repeal
R9-29-206	Renumber
R9-29-207	Renumber
R9-29-207	New Section
R9-29-208	Repeal
R9-29-208	Renumber
R9-29-208	Amend
R9-29-209	Repeal
R9-29-209	Renumber
R9-29-210	Repeal
R9-29-210	Renumber
R9-29-210	Amend
R9-29-211	Repeal
R9-29-211	Renumber
R9-29-211	Amend
R9-29-212	Repeal
R9-29-212	New Section
R9-29-213	Renumber
R9-29-213	Amend
R9-29-214	Repeal
R9-29-215	Renumber
R9-29-216	Repeal
R9-29-217	Repeal
R9-29-218	Repeal
R9-29-219	Renumber
R9-29-220	Renumber
R9-29-221	Renumber
R9-29-222	Renumber
R9-29-223	Repeal
R9-29-224	Renumber
R9-29-301	Amend
R9-29-302	Amend
R9-29-303	Repeal
R9-29-303	New Section
R9-29-304	New Section
Article 4	Repeal
R9-29-401	Repeal

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Article 5	Amend
R9-29-501	Amend
R9-29-503	Repeal
R9-29-601	Amend

**2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 36-2972

Implementing statute: A.R.S. §§ 36-2972, 36-2973, 36-2974, 36-2975, and 36-2976

**3. The effective date of the rule:**

January 6, 2013

**4. Citations to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 18 A.A.R. 1503, June 29, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 1438, June 29, 2012

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Mariaelena Ugarte

Address: Office of Administrative and Legal Services  
701 E. Jefferson St.  
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSrules@azahcccs.gov

Web site: [www.azahcccs.gov](http://www.azahcccs.gov)

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The AHCCCS Administration is initiating this rulemaking for purposes of amending its existing rules that define the scope of benefits for persons eligible for both Medicaid and Medicare. In general, the Medicare program has primary responsibility for the cost of care for these individuals, and Medicaid (that is, AHCCCS) is responsible for paying for the cost of Medicare Part B premiums, and/or Medicare coinsurance, copayments, and deductibles depending on the individual's Medicare entitlement under the Medicaid program to "Medicare Cost Sharing" (MCS).

AHCCCS has implemented several significant statutory and regulatory changes to benefits, such as limitations of inpatient hospital days for adults. With respect to persons eligible for Medicare Cost Sharing, AHCCCS is responsible in many instances for the cost of services that have been excluded or limited by AHCCCS but are still covered by Medicare. In light of the recent benefit changes and limitations in AHCCCS benefits, there is a heightened need to ensure that the MCS rules clearly identify the rights of persons eligible for MCS and the extent of AHCCCS' responsibility for payment for services. In addition, the Administration intends to update MCS regulations with any necessary technical changes to ensure clarity and conciseness of the rule.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

A study was not referenced or relied upon when revising the regulations.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

**9. A summary of the economic, small business, and consumer impact:**

The majority of the changes are clarifications of the existing MCS rules, policies and practices; however, this rule does propose to require all contractors to cover cost sharing for QMB Duals when services are received out of network based on recent clarification from the federal government.

Based on preliminary analysis, some of the plans have made payments of coinsurance deductible and copayment for services out of network. To the extent that plans making the payments and encountering payments, those costs will be reflected in the existing capitation rates of federal and state revenues of \$2.9M.

To the extent that this rule amendment would mandate that all plans make the payment for coinsurance and deductibles, we currently do not have sufficient data to determine whether the increase costs would be significant enough to warrant an increase in capitation payments.

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**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

No significant changes were made between the proposed rulemaking and the final rulemaking. The Administration has made grammatical or formatting changes as required.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

No comments were received as of the close of the comment period of July 31, 2012.

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

No other matters are applicable.

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Yes, although Medicare is a federal program and applies to the subject matter of the rules promulgated, these rules are not more stringent than the corresponding federal law.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

None

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

None

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
MEDICARE COST SHARING PROGRAM

ARTICLE 1. DEFINITIONS

Section

- R9-29-101. Location of Definitions  
R9-29-102. ~~Dually Eligible~~ Repealed

ARTICLE 2. ELIGIBILITY

Section

- R9-29-201. General  
R9-29-202. ~~Opportunity to Apply~~ Application Process  
R9-29-203. ~~How to File an Application~~  
~~R9-29-207-R9-29-203.~~ Assignment of Rights  
R9-29-204. ~~Date of Application~~ Eligibility Requirements  
R9-29-205. ~~Complete Application~~  
~~R9-29-213-R9-29-205.~~ Income Standards  
R9-29-206. ~~Assistance with Application~~  
~~R9-29-215-R9-29-206.~~ Institutionalized Person  
~~R9-29-207.~~ Resources  
R9-29-208. ~~Medical Support Obligation~~  
~~R9-29-219-R9-29-208.~~ Eligibility Determination  
R9-29-209. ~~Social Security Number (SSN)~~  
~~R9-29-220-R9-29-209.~~ Notice of Eligibility Determination



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- ~~R9-29-210. Citizenship~~
- ~~R9-29-221. R9-29-210. Effective Date of Eligibility~~
- ~~R9-29-211. Residency~~
- ~~R9-29-222. R9-29-211. Discontinuance~~
- ~~R9-29-212. Income Calculation Renewals~~
- ~~R9-29-224. R9-29-213. Reporting Changes~~
- ~~R9-29-214. Application for Other Benefits Repealed~~
- ~~R9-29-215. Renumbered~~
- ~~R9-29-216. Resources Repealed~~
- ~~R9-29-217. Verification Repealed~~
- ~~R9-29-218. Medicare Requirements Repealed~~
- ~~R9-29-219. Renumbered~~
- ~~R9-29-220. Renumbered~~
- ~~R9-29-221. Renumbered~~
- ~~R9-29-222. Renumbered~~
- ~~R9-29-223. Redetermination Repealed~~
- ~~R9-29-224. Renumbered~~

ARTICLE 3. BENEFITS AND SERVICES

- Section
- ~~R9-29-301. QMB Only~~
  - ~~R9-29-302. Dually Eligible QMB Dual Member~~
  - ~~R9-29-303. SLMB and QI-1 Non-QMB Dual Member~~
  - ~~R9-29-304. SLMB and QI-1~~

ARTICLE 4. ~~CONTRACTOR, PROVIDER, AND NONCONTRACTING PROVIDER REQUIREMENTS~~  
REPEALED

- Section
- ~~R9-29-401. Contractor, Provider, and Noncontracting Provider Requirements Repealed~~

ARTICLE 5. ~~GRIEVANCE AND APPEAL SYSTEM~~ PROCESS

- Section
- ~~R9-29-501. General Provisions for a Grievance and a Request for Hearing~~
  - ~~R9-29-503. Eligibility Hearing for an Applicant or a Member Repealed~~

ARTICLE 6. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

- Section
- ~~R9-29-601. First- and Third-party Liability and Recoveries~~

ARTICLE 1. DEFINITIONS

**R9-29-101. Location of Definitions**

- A. ~~Location of definitions. Definitions for this Chapter are contained in A.R.S. § 36-2971. Definitions include “Qualified Medicare Beneficiary only” (QMB), “Specified Low Income Medicare Beneficiary” (SLMB), and “Qualified Individual-1” (QI-1). For the purpose of Article 2 of this Chapter, QMB includes members defined in A.R.S. § 36-2971(5). Definitions applicable to this Chapter are found in the following:~~

<u>Definition</u>	<u>Section or Citation</u>
<u>“Federal poverty level” or “FPL”</u>	<u>A.R.S. § 36-2981</u>
<u>“Medicare Cost Sharing”</u>	<u>R9-29-101</u>
<u>“Non-QMB Dual”</u>	<u>R9-29-101</u>
<u>“QI-1”</u>	<u>R9-29-101</u>
<u>“QMB Dual”</u>	<u>R9-29-101</u>
<u>“QMB Only”</u>	<u>R9-29-101</u>
<u>“SLMB”</u>	<u>R9-29-101</u>

- B. ~~“AHCCCS” means the Arizona Health Care Cost Containment System. General definitions. In addition to definitions contained in A.R.S. § 36-2971, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:~~

- ~~C. “Medicare Cost Sharing” (MCS). The MCS Program is administered by the Administration and provides help to Medicare~~

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beneficiaries with costs related to Medicare services. MCS is also referred to as the "Medicare Savings Programs."

"Non-QMB Dual" means a person who qualifies to receive both Medicare and Medicaid services, but does not qualify for the QMB program.

"QI-1" means a person who qualifies as a Medicare beneficiary and for cost sharing assistance with the person's Part B premium known as Qualified Individual-1 (QI-1). This person does not qualify for QMB due to the person's income exceeding the QMB and SLMB FPL level.

"QMB Dual" means a person determined eligible under Article 2 of this Chapter for Qualified Medicare Beneficiary (QMB) and eligible for Acute Care services provided for in 9 A.A.C. 22 or ALTCS services provided for in 9 A.A.C. 28. A QMB Dual person receives both Medicare and Medicaid services and cost sharing assistance. For the purpose of Article 2 of this Chapter, QMB includes members defined in A.R.S. § 36-2971(5).

"QMB Only" means a person who qualifies to receive Medicare services only and cost-sharing assistance known as Qualified Medicare Beneficiary program (QMB). For the purpose of Article 2 of this Chapter, QMB includes members defined in A.R.S. § 36-2971(5).

"SLMB" means a person who qualifies as a Medicare beneficiary and for cost sharing assistance with the person's Part B premium known as Specified Low Income Medicare Beneficiary (SLMB). This person does not qualify for QMB due to the person's income exceeding the QMB FPL level.

**R9-29-102. ~~Dually Eligible Repealed~~**

~~Under A.R.S. § 36-2971, a person determined eligible under Article 2 of this Chapter for QMB, may also be eligible for Acute Care services provided for in 9 A.A.C. 22 or ALTCS services provided for in 9 A.A.C. 28.~~

**ARTICLE 2. ELIGIBILITY**

**R9-29-201. General**

- A. Eligibility determination. AHCCCS shall determine eligibility for a QMB, SLMB, or QI-1 under this Article.
- ~~B. Confidentiality. AHCCCS shall maintain the confidentiality of a person's financial information except as provided under Article 5. The Administration shall maintain the confidentiality of an applicant or member's records and limit the release of safeguarded information under A.A.C. R9-22-512.~~
- ~~C. The Administration will accept applications for the QI-1 program subject to the availability of funds. If the Director determines that monies may be insufficient for the program, the Administration shall stop processing applications for the program. If the Administration stops processing an application because the monies are insufficient, the Administration shall place an applicant on a waiting list and notify the applicant. After the Administration has verified that funding is sufficient, it will resume processing applications.~~

**R9-29-202. ~~Opportunity to Apply~~ Application Process**

- ~~A. The Administration shall provide the opportunity to apply without delay.~~
- ~~B. To apply for the MCS Program, a person shall submit an application form prescribed by AHCCCS unless the person's application has been referred by the Social Security Administration as part of the Extra Help program described under A.A.C. R9-30-101.~~
- ~~C. An application shall be submitted by a person listed in A.A.C. R9-22-1406(B) unless the person's application has been referred by the Social Security Administration as part of the Extra Help program described under A.A.C. R9-30-101.~~
- ~~D. The date of application is the date a signed application is received as described under A.A.C. R9-22-1406 or the date of an application referred by the Social Security Administration as part of the Extra Help program described under A.A.C. R9-30-101.~~
- ~~E. Applicant's representative. AHCCCS shall allow a person of an applicant's choice to accompany, assist, and represent the applicant in the application process or assistance can be provided by AHCCCS. If requested, AHCCCS shall help a person complete an application.~~
- ~~F. AHCCCS shall determine whether an application is complete under A.A.C. R9-22-1406.~~

**R9-29-203. ~~How to File an Application~~**

- ~~A. Written application. To apply for the MCS Program, a person shall submit a written application form prescribed by AHCCCS to any AHCCCS office or outstation location approved by AHCCCS.~~
- ~~B. Who shall submit. An application shall be submitted by a person listed in A.A.C. R9-22-1405(B).~~

**~~R9-29-207.~~R9-29-203. Assignment of Rights**

~~A person determined eligible for QMB benefits assigns rights to medical benefits to which the person is entitled under operation of law to AHCCCS, under A.R.S. §§ 36-2903 and 36-2972.~~

**R9-29-204. ~~Date of Application~~ Eligibility Requirements**

~~The date of application is the date a signed application is received at an AHCCCS office or outstation location approved by AHCCCS. To be eligible for MCS a person shall:~~

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1. Provide information necessary to establish paternity and enforce medical support obligations, when requested by AHCCCS for the QMB program.
2. Furnish a SSN or apply for a SSN.
3. Be a United States citizen or a qualified alien under A.R.S. § 36-2903.03.
4. Be a resident of Arizona.
5. Apply for potential benefits that may be available to the person, if requested by AHCCCS.
6. Provide verification, or authorize the release of verification, for all information necessary to complete the determination of eligibility, and
7. Receive Medicare Part A benefits or be determined conditionally entitled to Medicare Part A benefits by the Social Security Administration.

**~~R9-29-205. Complete Application~~**

~~AHCCCS shall determine whether an application is complete under A.A.C. R9-22-1405(E).~~

**~~R9-29-213.R9-29-205. Income Standards~~**

~~A. To be eligible, a person's income shall meet the following federal poverty levels (FPL), adjusted annually:~~

1. ~~QMB. Income is equal to or less than 100 ~~per cent~~ percent of the FPL.~~
2. ~~SLMB. Income is greater than 100 ~~per cent~~ percent but equal to or less than 120 ~~per cent~~ percent of the FPL.~~
3. ~~QI-1. Income is at least 120 ~~per cent~~ percent but equal to or less than 135 percent of the FPL.~~

~~B. AHCCCS shall calculate income under A.A.C. R9-22-1503.~~

**~~R9-29-206. Assistance with Application~~**

~~A. Applicant's representative. AHCCCS shall allow a person of an applicant's choice to accompany, assist, and represent the applicant in the application process.~~

~~B. Assistance by AHCCCS. If requested, AHCCCS shall help a person complete an application.~~

**~~R9-29-215.R9-29-206. Institutionalized Person~~**

~~The provisions in A.A.C. R9-22-1402 apply to this Article for an institutionalized person.~~

**~~R9-29-207. Resources~~**

~~Resources such as, cash, financial accounts, real property, vehicles, trusts, and life insurance are not considered in determining a person's QMB, SLMB or QI-1 eligibility.~~

**~~R9-29-208. Medical Support Obligation~~**

~~To be eligible for QMB, a person shall provide information necessary to establish paternity and enforce medical support obligations, when requested by AHCCCS.~~

**~~R9-29-219.R9-29-208. Eligibility Determination~~**

~~A. AHCCCS shall make an eligibility determination within 45 days of the date of application, except when:~~

1. ~~The agency cannot reach a decision because the applicant delays or fails to take a required action, or~~
2. ~~When there is an administrative or other emergency beyond the agency's control.~~

~~B. AHCCCS shall not use the time to determine eligibility as a waiting period before determining eligibility; or as a reason for denying eligibility when a determination has not been made within the time standards.~~

**~~R9-29-209. Social Security Number (SSN)~~**

~~To be eligible for MCS a person shall furnish a SSN or apply for a SSN.~~

**~~R9-29-220.R9-29-209. Notice of Eligibility Determination~~**

~~A. Notice. AHCCCS shall send an applicant written notice of the eligibility decision. The notice shall include a statement of the action and an explanation of the person's hearing rights specified in Article 5.~~

~~B. Approval. If AHCCCS determines that the applicant is eligible, the notice shall contain the effective date of eligibility.~~

~~C. Denial. If AHCCCS determines that the applicant is not eligible, the notice shall contain:~~

1. ~~The effective date of the decision;~~
2. ~~A statement detailing the reason for the decision, including specific financial calculations and the financial eligibility standard if applicable; and~~
3. ~~The legal authority supporting the decision.~~

**~~R9-29-210. Citizenship~~**

~~To be eligible for MCS, a person shall be a United States citizen or a qualified alien under A.R.S. § 36-2903.03.~~

**~~R9-29-221.R9-29-210. Effective Date of Eligibility~~**

~~A. QMB. The effective date of eligibility is the first day of the month following the month in which AHCCCS makes the eligibility decision.~~

~~B. SLMB and QI-1. The effective date of eligibility is the first day of the first month AHCCCS determines the person is eli-~~

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gible under this Article, but no earlier ~~then~~ than the first day of the month of application.

- C. QI-1.** The effective date of eligibility is the first day of the first month AHCCCS determines the person is eligible under this Article, but no earlier than the first day of the month of application. QI-1 members are entitled to receive cost sharing assistance through the end of the calendar year in which they qualified for the program.

**~~R9-29-211.~~ Residency**

~~To be eligible for MCS, a person shall be a current resident of this state.~~

**~~R9-29-222.~~R9-29-211. Discontinuance**

- A. Discontinuance. AHCCCS shall discontinue a person's eligibility if any of the conditions of eligibility under this Article are not met.
- B. Notice. AHCCCS shall follow the discontinuance notice requirements under ~~R9-22-1413~~ A.A.C. R9-22-1415, except where it states "Department" replace the term with "Administration."

**~~R9-29-212.~~ Income Calculation Renewals**

~~AHCCCS shall calculate income under A.A.C. R9-22-1503.~~

**A.** QMB and SLMB. AHCCCS shall renew a person's eligibility for QMB or SLMB at least one time every 12 months.

**B.** QI-1. A person receiving QI-1 benefits shall reapply every 12 months.

**~~R9-29-224.~~R9-29-213. Income Standards Reporting Changes**

A person eligible under this Article shall report to an ALTCS or Social Security Insurance Medical Assistance Only (SSI-MAO) office the following changes for the person, the person's spouse, or the person's dependent children:

1. A change of address;
2. An admission to, or discharge from, a public institution, as specified in A.A.C. R9-22-1402;
3. A change in household composition;
4. A change in income;
5. A determination of eligibility for other benefits;
6. A death;
7. A change in marital status;
8. A change in Arizona state residency;
9. A change in citizenship or alien status;
10. Receipt of a SSN;
11. A change in Medicare receipt or eligibility; and
12. For QMB recipients, a change in first- or third-party liability that may be responsible for payment of all or a portion of the person's medical costs.

**~~R9-29-214.~~ Application for Other Benefits Repealed**

~~To be eligible for MCS, a person shall apply for other benefits, if requested by AHCCCS.~~

**~~R9-29-215.~~ Renumbered**

**~~R9-29-216.~~ Resources Repealed**

~~Resources mean property that a person owns including, but not limited to cash, financial accounts, real property, vehicles, trusts, and life insurance. Resources are not considered in determining a person's MCS eligibility.~~

**~~R9-29-217.~~ Verification Repealed**

~~To be eligible for MCS, a person shall provide verification, or authorize the release of verification, for all information necessary to complete the determination of eligibility.~~

**~~R9-29-218.~~ Medicare Requirements Repealed**

~~To be eligible for MCS, a person shall either be receiving Medicare Part A benefits or determined conditionally entitled to Medicare Part A benefits by the Social Security Administration. A person may request that the Social Security Administration determine the person to be conditionally entitled to Medicare Part A if the person is required to pay a Part A premium. A person who is conditionally entitled to Medicare Part A is not enrolled in Part A unless approved for QMB.~~

**~~R9-29-219.~~ Renumbered**

**~~R9-29-220.~~ Renumbered**

**~~R9-29-221.~~ Renumbered**

**~~R9-29-222.~~ Renumbered**

**~~R9-29-223.~~ Redetermination Repealed**

**A.** QMB and SLMB. AHCCCS shall redetermine a person's eligibility for QMB or SLMB at least one time every 12 months.

**B.** QI-1. A person receiving QI-1 benefits shall reapply each calendar year.

R9-29-224. Renumbered

ARTICLE 3. BENEFITS AND SERVICES

R9-29-301. QMB Only

- A. QMB benefits. ~~A For a person determined eligible as a QMB Only only member shall receive, the Administration shall provide payment of:~~
1. Medicare Part A premium,
  2. Medicare Part B premium, and
  3. Medicare coinsurance and Medicare deductible for Medicare ~~covered~~ services covered under Title XVIII of the Social Security Act to the provider.
- B. Payment of QMB Only ~~only~~ benefits. The Administration shall not pay coinsurance or deductible to a member.
1. ~~The Administration shall:~~
    - a. ~~Pay Medicare Part A and Part B premiums, and~~
    - b. ~~Pay the coinsurance and deductible to the provider.~~
  2. ~~The Administration shall not pay:~~
    - a. ~~More than the Medicare approved amounts, or~~
    - b. ~~Coinsurance or deductible to a member.~~

R9-29-302. Dually Eligible QMB Dual Member

- ~~A.~~ Covered services. A person determined to be a dually eligible member shall receive medical services and provisions under 9 A.A.C. 22, Article 2, or services and provisions under 9 A.A.C. 28, Article 2, in addition to the Medicare-related payments under R9-29-301(A).
- ~~B.~~ Payment responsibilities. AHCCCS shall pay the Medicare Part A and Part B premiums. The contractor shall pay the coinsurance and deductibles in accordance with the contract with AHCCCS.
- ~~C.~~ Member responsibilities. A dually eligible member who receives services under 9 A.A.C. 22, Article 2 or 9 A.A.C. 28, Article 2 from a provider within the contractor's network is not liable for any Medicare coinsurance, deductible, or copayment associated with those services and is not liable for any balance.
- A. Covered services. A person determined to be a QMB Dual eligible member shall receive medical services provided under 9 A.A.C. 22, Article 2, or services provided under 9 A.A.C. 28, Article 2, in addition to the Medicare-related payments under R9-29-301(A).
- B. Premiums. The Administration pays Medicare part A and B premiums for a QMB Dual member enrolled with a contractor in a plan or AHCCCS Fee-For-Service.
- C. The Administration's payment responsibilities.
1. The Administration shall pay the following costs for members not enrolled with contractors. When services are received from an AHCCCS registered provider and the service is covered:
    - a. By Medicare only, the Administration shall pay the Medicare coinsurance and deductible.
    - b. By Medicaid only, the Administration shall pay the lesser of billed charges or the Capped Fee-For-Service Schedule rate for the services covered under 9 A.A.C. 22, Article 2 and 9 A.A.C. 28, Article 2.
    - c. By both Medicare and Medicaid, the Administration shall pay Medicare coinsurance and deductible.
  2. When services are received from a non-registered provider and the service is covered, the Administration shall not pay the Medicare coinsurance and deductible.
- D. The contractor's payment responsibilities. Unless the subcontract with the provider sets forth different terms, when the enrolled member receives services from an AHCCCS registered provider in or out of network and the service is covered:
1. By Medicare only, the contractor shall pay the Medicare coinsurance and deductible.
  2. By Medicaid only, the contractor shall pay the provider in accordance with the contract.
  3. By both Medicare and Medicaid, the contractor shall pay the lesser of:
    - a. The Medicare copay, coinsurance or deductible, or
    - b. The difference between the Health plan contracted rate and the Medicare paid amount.
- ~~D-E.~~ Coordination of prescription drug benefit with Medicare Part D. Notwithstanding subsections (A) through ~~(C)~~ (D), services do not include pharmaceutical services to the extent limited under 42 U.S.C. 1396u-5(d). A contractor is not liable for any Medicare ~~coinsurance, deductible, or copayment~~ copay, coinsurance or deductible associated with pharmaceutical services subject to the limitation under 42 U.S.C. 1396u-5(d).

R9-29-303. SLMB and QI-1 Non-QMB Dual Member

~~AHCCCS shall pay Medicare Part B premiums.~~

- A. Covered services. A person determined to be a Non-QMB Dual eligible member shall receive medical services and provisions under 9 A.A.C. 22, Article 2, or services and provisions under 9 A.A.C. 28, Article 2.

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- B.** Premiums. The Administration pays Medicare part B premiums for a Non-OMB dual member enrolled with a contractor in a plan or AHCCCS Fee-For-Service for the following individuals:
1. An individual described in 42 CFR 431.625;
  2. An individual enrolled in ALTCS but who does not qualify as a QMB, SLMB or OI;
  3. An individual who is eligible for Medicaid under a mandatory or optional Title XIX coverage group for the aged, blind, or disabled (SSI-MAO);
  4. An individual who is eligible for continued coverage while eligibility redetermination is pending as described under 42 CFR 435.1003;
  5. An individual who is in the guaranteed enrollment period described in 42 CFR 435.212 and the state was paying the individual's Part B premium before eligibility terminated.
- C.** The Administration's payment responsibilities.
1. The Administration shall pay the following costs for members not enrolled with contractors. When services are received from an AHCCCS registered provider and the service is covered up to the limitations described within 9 A.A.C. 22, Article 2:
    - a. By Medicare only, the Administration shall not pay the Medicare copay, coinsurance or deductible.
    - b. By Medicaid only, the Administration shall pay the lesser of billed charges or the Capped Fee-For-Service Schedule rate for the services covered under 9 A.A.C. 22, Article 2 and 9 A.A.C. 28, Article 2.
    - c. By both Medicare and Medicaid, the Administration shall pay the Medicare copay, coinsurance or deductible.
  2. When services are received from a non-registered provider and the service is covered, the Administration shall not pay the Medicare copay, coinsurance or deductible.
- D.** The contractor's payment responsibilities.
1. When an enrolled member receives services within the network of contracted providers and the service is covered up to the limitations described within 9 A.A.C. 22, Article 2:
    - a. By Medicare only, the contractor shall not pay the Medicare copay, coinsurance or deductible.
    - b. By Medicaid only, the contractor shall pay the provider in accordance with the subcontract.
    - c. By both Medicare and Medicaid, unless the subcontract with the provider sets forth different terms, the contractor shall pay the lesser of:
      - i. The Medicare copay, coinsurance or deductible, or
      - ii. Any amount remaining after the Medicare paid amount is deducted from the subcontracted rate.
  2. When an enrolled member receives services from a non-contracting provider and the service is covered:
    - a. By Medicare only, the contractor has no responsibility for payment.
    - b. By Medicaid only, and the contractor has not referred the member to the provider or has not authorized the provider to render services and the services are not emergent, the contractor has no responsibility for payment.
    - c. By Medicaid only, and the contractor has referred the member to the provider or has authorized the provider to render services or the services are emergent, the contractor shall pay in accordance with A.A.C. R9-22-705.
    - d. By both Medicare and Medicaid, and the contractor has not referred the member to the provider or has not authorized the provider to render services and the services are not emergent, the contractor has no responsibility for payment.
    - e. By both Medicare and Medicaid, and the contractor has referred the member to the provider or has authorized the provider to render services or the services are emergent, the contractor shall pay the lesser of:
      - i. The Medicare copay, coinsurance or deductible, or
      - ii. Any amount remaining after the Medicare paid amount is deducted from the amount otherwise payable under A.A.C. R9-22-705.
- E.** Member responsibilities.
1. A Non-QMB Dual eligible member who receives covered services under 9 A.A.C. 22, Article 2 or 9 A.A.C. 28, Article 2 from a provider within the contractor's network is not liable for any Medicare copay, coinsurance or deductible associated with those services and is not liable for any balance of billed charges unless services have reached the limitations described within 9 A.A.C. 22, Article 2.
  2. When an enrolled member chooses to receive services out of network that are covered by both Medicare and Medicaid, the member is responsible for any Medicare copay, coinsurance or deductible associated with those services unless the contractor is responsible as described in A.A.C. R9-22-705 and the provider has complied with A.A.C. R9-22-702.
- F.** Coordination of prescription drug benefit with Medicare Part D. Notwithstanding subsections (A) through (D), services do not include pharmaceutical services to the extent limited under 42 U.S.C. 1396u-5(d). A contractor is not liable for any Medicare copay, coinsurance or deductible associated with pharmaceutical services subject to the limitation under 42 U.S.C. 1396u-5(d).

**R9-29-304. SLMB and OI-1**

AHCCCS shall pay the Medicare Part B premiums.

**ARTICLE 4. ~~CONTRACTOR, PROVIDER, AND NONCONTRACTING PROVIDER REQUIREMENTS~~ Repealed**

**R9-29-401. ~~Contractor, Provider, and Noncontracting Provider Requirements~~ Repealed**

- ~~A.~~ For dually eligible members, a contractor is responsible for benefits and services under R9-29-302(B) and either 9 A.A.C. 22 or 9 A.A.C. 28, as applicable.
- ~~B.~~ A contractor shall pay a copayment for services provided to a dually eligible member by or under referral from the member's primary care physician or primary care practitioner, under A.R.S. § 36-2974.
- ~~C.~~ Providers and noncontracting providers shall submit all claims for copayments, deductibles, and coinsurance for services rendered to a QMB-only member under A.R.S. § 36-2904(H).

**ARTICLE 5. ~~GRIEVANCE AND APPEAL SYSTEM~~ PROCESS**

**R9-29-501. ~~General Provisions for a Grievance and a Request for Hearing~~**

A request for hearing under this Chapter shall comply with ~~A.A.C. R9-22-801 and R9-22-802~~ 9 A.A.C. 34. For the purposes of this Article, "hearing" means an administrative hearing under Title 41, Chapter 6, Article 10.

**R9-29-503. ~~Eligibility Hearing for an Applicant or a Member~~ Repealed**

~~An eligibility hearing for a member or an applicant under this Chapter shall comply with A.A.C. R9-22-803.~~

**ARTICLE 6. ~~FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES~~**

**R9-29-601. ~~First- and Third-party Liability and Recoveries~~**

- ~~A.~~ The provisions specified in 9 A.A.C. 22, Article 10 apply to this Section. For the purposes of this Article, "third-party liability" means the resources available from a person, entity, or program that is or may be, by agreement, circumstance, or otherwise, liable to pay all or part of the medical expenses incurred by an applicant or member.
- ~~B.~~ AHCCCS shall not be liable for payment of coinsurance and deductibles when Medicare denies payment.