



Bill Number: H.B. 2321

Driggs Floor Amendment

Reference to: House engrossed bill

Amendment drafted by: Sharon Langford

FLOOR AMENDMENT EXPLANATION

Alters the definition of *significant procurement role* to exclude decisions based on commonly accepted industry standards or known published standards of an agency.

Permits the ADOA Director to waive any or all of a no-hire period in excess of 24 months under specific circumstances.

Prohibits an employee assigned to develop, evaluate or approve an agency's qualified vendor list from accepting any position or having employment discussions with a vendor on the list within one year of the initial publication, one year of a vendor being added to the list or one year of a vendor being awarded a contract.

Provides a good faith defense on a finding by the ADOA Director that an employee has not engaged in a significant procurement role.

Amendment explanation prepared by Sharon Langford

4/14/2014

DRIGGS FLOOR AMENDMENT
SENATE AMENDMENTS TO H.B. 2321
(Reference to House engrossed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 41-741, Arizona Revised Statutes, is amended to
3 read:

4 41-741. Definitions

5 In this article and articles 5 and 6 of this chapter, unless the
6 context otherwise requires:

7 1. "Appointing authority" means the person or group of persons
8 authorized by law or delegated authority to make appointments to fill
9 positions.

10 2. "At will" means an employment relationship where either party to
11 the relationship may sever the relationship at any time for any reason other
12 than an unlawful reason.

13 3. "Break in service" means a separation from state employment,
14 regardless of the reason for separation.

15 4. "Change in assignment" means movement of an employee to a different
16 position in the same state agency or another state agency.

17 5. "Covered employee" means an employee who:

18 (a) Before September 29, 2012, is in the state service, is not
19 uncovered pursuant to section 41-742, subsection A and has remained in
20 covered status without a break in service since that date.

21 (b) Before September 29, 2012, is in the state service, is employed as
22 a correctional officer I, correctional officer II, correctional officer III
23 or community corrections officer and has remained in covered status without a
24 break in service since that date.

25 (c) Before September 29, 2012, is in the state service, is a full

1 authority peace officer as certified by the Arizona peace officer standards
2 and training board and has remained in that status without a break in service
3 since that date.

4 (d) On or after September 29, 2012, is a correctional officer I,
5 correctional officer II, correctional officer III or community corrections
6 officer and is appointed to a position in the covered service, but does not
7 include a position in any other class in the correctional officer class
8 series or the community correctional officer class series or in any other
9 correctional class series.

10 (e) On or after September 29, 2012, is a full authority peace officer
11 as certified by the Arizona peace officer standards and training board and is
12 appointed to a position that requires such a certification in the covered
13 service.

14 6. "Covered service" means that employment status conferring rights of
15 appeal as prescribed in sections 41-782 and 41-783 or section 41-1830.16, as
16 applicable.

17 7. "Director" means the director of the department of administration,
18 or the director's designee, who is responsible for administering the state
19 personnel system pursuant to applicable state and federal laws.

20 8. "Employee" means all officers and employees of this state, whether
21 in covered service or uncovered service, unless otherwise prescribed.

22 9. "Full authority peace officer" means a peace officer whose
23 authority to enforce the laws of this state is not limited by the rules
24 adopted by the Arizona peace officer standards and training board.

25 10. "Original probationary period" means the specified period following
26 initial appointment to covered service.

27 11. "Probationary period" means a working test period of employment in
28 a covered service position for evaluation of the employee's work.

29 12. "Promotional probation" means the specified period of employment
30 following promotion of a permanent status employee to another covered service
31 position that has a higher pay grade.

1 13. "Rules" means rules adopted by the department of administration,
2 human resources division.

3 14. "Significant procurement role":

4 (a) Means any role that includes any of the following duties:

5 ~~(a)~~ (i) Participating in the development of a procurement as defined
6 in section 41-2503.

7 ~~(b)~~ (ii) Participating in the development of an evaluation tool.

8 ~~(c)~~ (iii) Approving a procurement as defined in section 41-2503 or an
9 evaluation tool.

10 ~~(d)~~ (iv) Soliciting quotes greater than ten thousand dollars for the
11 provision of materials, services or construction.

12 ~~(e)~~ (v) Serving as a technical advisor or an evaluator who evaluates
13 a procurement as defined in section 41-2503.

14 ~~(f)~~ (vi) Recommending or selecting a vendor that will provide
15 materials, services or construction to this state.

16 ~~(g)~~ (vii) Serving as a decision maker or designee on a protest or an
17 appeal by a party regarding an agency procurement selection or decision.

18 (b) DOES NOT INCLUDE MAKING DECISIONS ON DEVELOPING SPECIFICATIONS AND
19 THE SCOPE OF WORK FOR A PROCUREMENT AS DEFINED IN SECTION 41-2503 IF THE
20 DECISION IS BASED ON THE APPLICATION OF COMMONLY ACCEPTED INDUSTRY STANDARDS
21 OR KNOWN PUBLISHED STANDARDS OF THE AGENCY AS APPLIED TO THE PROJECT,
22 SERVICES, GOODS OR MATERIALS.

23 15. "State agency" means a department, board, office, authority,
24 commission or other governmental budget unit of this state and includes an
25 agency assigned to a department for administrative purposes. State agency
26 does not include the legislative and judicial branches, the Arizona board of
27 regents, state universities, the Arizona state schools for the deaf and the
28 blind, the department of public safety, the Arizona peace officer standards
29 and training board, the cotton research and protection council or public
30 corporations.

31 16. "State personnel board" means the board established by section
32 41-781.

1 17. "State personnel system" means all state agencies and employees of
2 those agencies that are not exempted by this article.

3 18. "State service" means all offices and positions of employment in
4 state government that, before September 29, 2012, were subject to the
5 provisions of articles 5 and 6 of this chapter that were in effect before
6 September 29, 2012.

7 19. "Supervisor" means a state employee who has one or more other state
8 employees reporting directly to the person and, for those state employees,
9 typically has the authority to:

- 10 (a) Approve sick or annual leave.
- 11 (b) Recommend hiring, discipline or dismissal.
- 12 (c) Assign or schedule daily work.
- 13 (d) Complete a performance evaluation.

14 20. "Uncovered employee" means an employee in uncovered service.

15 21. "Uncovered service" means employment at will and includes all state
16 employees except those in covered service."

17 Renumber to conform

18 Page 1, line 36, after the period insert "THE DIRECTOR OF THE DEPARTMENT OF
19 ADMINISTRATION MAY WAIVE ANY OR ALL OF THE WAITING PERIOD IN EXCESS OF
20 TWENTY-FOUR MONTHS FOR A PROCUREMENT OFFICER OR AN EMPLOYEE WITH A
21 SIGNIFICANT PROCUREMENT ROLE IF THE PERIOD OF TIME THAT FOLLOWS THE SIGNATURE
22 OF THE NONDISCLOSURE AGREEMENT EXCEEDS TWENTY-FOUR MONTHS. A PROCUREMENT
23 OFFICER OR AN EMPLOYEE SEEKING A WAIVER SHALL MAKE A WRITTEN REQUEST TO THE
24 OFFICER'S OR EMPLOYEE'S STATE AGENCY DIRECTOR, AND THE DIRECTOR OF THE STATE
25 AGENCY SHALL FORWARD THE REQUEST WITH A WRITTEN RECOMMENDATION TO THE
26 DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. THE DIRECTOR OF THE DEPARTMENT
27 OF ADMINISTRATION SHALL PROVIDE A WRITTEN DECISION AND JUSTIFICATION WITHIN
28 FIFTEEN BUSINESS DAYS AFTER THE RECEIPT OF THE COMPLETE REQUEST. THE
29 DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION MAY NOT APPROVE WAIVER REQUESTS
30 FOR MATTERS STILL IN EVALUATION OR WITHIN SIX MONTHS FOLLOWING THE CONTRACT
31 AWARD. IF THE REQUESTING PARTY IS THE DIRECTOR OR A DEPUTY DIRECTOR OF A
32 STATE AGENCY, THE REQUEST FOR A WAIVER AND ALL WRITTEN MATERIALS, INCLUDING A

1 DIRECTOR RECOMMENDATION, MUST BE FORWARDED TO THE GOVERNOR FOR A FINAL
2 DECISION, EXCEPT THAT THE DIRECTOR MAY NOT MAKE ANY RECOMMENDATION OR
3 DETERMINATION ON THE DIRECTOR'S OWN REQUEST."

4 Page 1, line 42, after the period insert "THIS SUBSECTION DOES NOT APPLY TO A
5 PROCUREMENT OFFICER OR AN EMPLOYEE WHO IN GOOD FAITH RELIES ON A
6 DETERMINATION ISSUED BY THE DIRECTOR PURSUANT TO SECTION 41-2517, SUBSECTION
7 D THAT THE PROCUREMENT OFFICER OR EMPLOYEE HAS NOT HAD A SIGNIFICANT
8 PROCUREMENT ROLE."

9 Page 10, between lines 33 and 34, insert:

10 "Sec. 6. Section 41-2503, Arizona Revised Statutes, is amended to
11 read:

12 41-2503. Definitions

13 In this chapter, unless the context otherwise requires:

14 1. "Architect services" means those professional architect services
15 that are within the scope of architectural practice as provided in title 32,
16 chapter 1.

17 2. "Business" means any corporation, partnership, individual, sole
18 proprietorship, joint stock company, joint venture or other private legal
19 entity.

20 3. "Change order" means a written order that is signed by a
21 procurement officer and that directs the contractor to make changes that the
22 changes clause of the contract authorizes the procurement officer to order.

23 4. "Construction":

24 (a) Means the process of building, altering, repairing, improving or
25 demolishing any public structure or building or other public improvements of
26 any kind to any public real property.

27 (b) Does not include:

28 (i) The routine operation, routine repair or routine maintenance of
29 existing facilities, structures, buildings or real property.

30 (ii) The investigation, characterization, restoration or remediation
31 due to an environmental issue of existing facilities, structures, buildings
32 or real property.

1 5. "Construction-manager-at-risk" means a project delivery method in
2 which:

3 (a) There is a separate contract for design services and a separate
4 contract for construction services, except that instead of a single contract
5 for construction services, the purchasing agency may elect separate contracts
6 for preconstruction services during the design phase, for construction during
7 the construction phase and for any other construction services.

8 (b) The contract for construction services may be entered into at the
9 same time as the contract for design services or at a later time.

10 (c) Design and construction of the project may be either:

11 (i) Sequential with the entire design complete before construction
12 commences.

13 (ii) Concurrent with the design produced in two or more phases and
14 construction of some phases commencing before the entire design is complete.

15 (d) Finance services, maintenance services, operations services,
16 preconstruction services and other related services may be included.

17 6. "Construction services" means either of the following for
18 construction-manager-at-risk, design-build and job-order-contracting project
19 delivery methods:

20 (a) Construction, excluding services, through the
21 construction-manager-at-risk or job-order-contracting project delivery
22 methods.

23 (b) A combination of construction and, as elected by the purchasing
24 agency, one or more related services, such as finance services, maintenance
25 services, operations services, design services and preconstruction services,
26 as those services are authorized in the definitions of
27 construction-manager-at-risk, design-build or job-order-contracting in this
28 section.

29 7. "Contract" means all types of state agreements, regardless of what
30 they may be called, for the procurement of materials, services, construction,
31 construction services or the disposal of materials.

1 8. "Contract modification" means any written alteration in the terms
2 and conditions of any contract accomplished by mutual action of the parties
3 to the contract.

4 9. "Contractor" means any person who has a contract with a state
5 governmental unit.

6 10. "Data" means documented information, regardless of form or
7 characteristic.

8 11. "Department" means the department of administration.

9 12. "Design-bid-build" means a project delivery method in which:

10 (a) There is a sequential award of two separate contracts.

11 (b) The first contract is for design services.

12 (c) The second contract is for construction.

13 (d) Design and construction of the project are in sequential phases.

14 (e) Finance services, maintenance services and operations services are
15 not included.

16 13. "Design-build" means a project delivery method in which:

17 (a) There is a single contract for design services and construction
18 services, except that instead of a single contract for design services and
19 construction services, the purchasing agency may elect separate contracts for
20 preconstruction services and design services during the design phase, for
21 construction and design services during the construction phase and for any
22 other construction services.

23 (b) Design and construction of the project may be either:

24 (i) Sequential with the entire design complete before construction
25 commences.

26 (ii) Concurrent with the design produced in two or more phases and
27 construction of some phases commencing before the entire design is complete.

28 (c) Finance services, maintenance services, operations services,
29 preconstruction services and other related services may be included.

30 14. "Design professional" means an individual or firm that is
31 registered by the state board of technical registration pursuant to title 32,
32 chapter 1 to practice architecture, engineering, geology, landscape

1 architecture or land surveying or any combination of those professions and
2 any person employed by the registered individual or firm.

3 15. "Design requirements":

4 (a) Means at a minimum the purchasing agency's written description of
5 the project or service to be procured, including:

6 (i) The required features, functions, characteristics, qualities and
7 properties.

8 (ii) The anticipated schedule, including start, duration and
9 completion.

10 (iii) The estimated budgets applicable to the specific procurement for
11 design and construction and, if applicable, for operation and maintenance.

12 (b) May include:

13 (i) Drawings and other documents illustrating the scale and
14 relationship of the features, functions and characteristics of the project,
15 which shall all be prepared by a design professional who is registered
16 pursuant to section 32-121.

17 (ii) Additional design information or documents that the purchasing
18 agency elects to include.

19 16. "Design services" means architect services, engineer services or
20 landscape architect services.

21 17. "Designee" means a duly authorized representative of the director.

22 18. "Director" means the director of the department of administration.

23 19. "Employee" means an individual drawing a salary from a state
24 governmental unit, whether elected or not, and any noncompensated individual
25 performing personal services for any state governmental unit.

26 20. "Engineer services" means those professional engineer services that
27 are within the scope of engineering practice as provided in title 32,
28 chapter 1.

29 21. "Finance services" means financing for a construction services
30 project.

31 22. "General services administration contract" means contracts awarded
32 by the United States government general services administration.

1 23. "Grant" means the furnishing of financial or other assistance,
2 including state funds or federal grant funds, by any state governmental unit
3 to any person for the purpose of supporting or stimulating educational,
4 cultural, social or economic quality of life.

5 24. "Job-order-contracting" means a project delivery method in which:

6 (a) The contract is a requirements contract for indefinite quantities
7 of construction.

8 (b) The construction to be performed is specified in job orders issued
9 during the contract.

10 (c) Finance services, maintenance services, operations services,
11 preconstruction services, design services and other related services may be
12 included.

13 25. "Landscape architect services" means those professional landscape
14 architect services that are within the scope of landscape architectural
15 practice as provided in title 32, chapter 1.

16 26. "Maintenance services" means routine maintenance, repair and
17 replacement of existing facilities, structures, buildings or real property.

18 27. "Materials":

19 (a) Means all property, including equipment, supplies, printing,
20 insurance and leases of property.

21 (b) Does not include land, a permanent interest in land or real
22 property or leasing space.

23 28. "Operations services" means routine operation of existing
24 facilities, structures, buildings or real property.

25 29. "Owner" means a state purchasing agency or state governmental unit.

26 30. "Person" means any corporation, business, individual, union,
27 committee, club, other organization or group of individuals.

28 31. "Preconstruction services" means services and other activities
29 during the design phase.

1 32. "Procurement":

2 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
3 any materials, services, construction or construction services.

4 (b) Includes all functions that pertain to obtaining any materials,
5 services, construction or construction services, including description of
6 requirements, selection and solicitation of sources, preparation and award of
7 contract, and all phases of contract administration.

8 33. "Procurement officer":

9 (a) Means any person duly authorized to enter into and administer
10 contracts and make written determinations with respect to the contracts.

11 (b) Includes an authorized representative acting within the limits of
12 the authorized representative's authority.

13 34. "Purchasing agency" means any state governmental unit that is
14 authorized by this chapter or rules adopted pursuant to this chapter, or by
15 way of delegation from the director, to enter into contracts.

16 35. "Services":

17 (a) Means the furnishing of labor, time or effort by a contractor or
18 subcontractor that does not involve the delivery of a specific end product
19 other than required reports and performance.

20 (b) Does not include employment agreements or collective bargaining
21 agreements.

22 36. "Significant procurement role":

23 (a) Means any role that includes any of the following duties:

24 ~~(a)~~ (i) Participating in the development of a procurement.

25 ~~(b)~~ (ii) Participating in the development of an evaluation tool.

26 ~~(c)~~ (iii) Approving a procurement or an evaluation tool.

27 ~~(d)~~ (iv) Soliciting quotes greater than ten thousand dollars for the
28 provision of materials, services or construction.

29 ~~(e)~~ (v) Serving as a technical advisor or an evaluator who evaluates
30 a procurement.

31 ~~(f)~~ (vi) Recommending or selecting a vendor that will provide
32 materials, services or construction to this state.

1 ~~(g)~~ (vii) Serving as a decision maker or designee on a protest or an
2 appeal by a party regarding an agency procurement selection or decision.

3 (b) DOES NOT INCLUDE MAKING DECISIONS ON DEVELOPING SPECIFICATIONS AND
4 THE SCOPE OF WORK FOR A PROCUREMENT IF THE DECISION IS BASED ON THE
5 APPLICATION OF COMMONLY ACCEPTED INDUSTRY STANDARDS OR KNOWN PUBLISHED
6 STANDARDS OF THE AGENCY AS APPLIED TO THE PROJECT, SERVICES, GOODS OR
7 MATERIALS.

8 37. "State governmental unit" means any department, commission,
9 council, board, bureau, committee, institution, agency, government
10 corporation or other establishment or official of the executive branch or
11 corporation commission of this state.

12 38. "Subcontractor" means a person who contracts to perform work or
13 render service to a contractor or to another subcontractor as a part of a
14 contract with a state governmental unit.

15 39. "Using agency" means any state governmental unit that uses any
16 materials, services or construction procured under this chapter."

17 Renumber to conform

18 Page 10, line 36, after "classification" insert ";exception"

19 Page 11, between lines 39 and 40, insert:

20 "D. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION MAY WAIVE ANY OR
21 ALL OF THE WAITING PERIOD REQUIRED PURSUANT TO SUBSECTIONS A, B AND C OF THIS
22 SECTION IN EXCESS OF TWENTY-FOUR MONTHS FOR A PROCUREMENT OFFICER OR AN
23 EMPLOYEE WITH A SIGNIFICANT PROCUREMENT ROLE IF THE PERIOD OF TIME THAT
24 FOLLOWS THE SIGNATURE OF THE NONDISCLOSURE AGREEMENT EXCEEDS TWENTY-FOUR
25 MONTHS. A PROCUREMENT OFFICER OR AN EMPLOYEE SEEKING A WAIVER SHALL MAKE A
26 WRITTEN REQUEST TO THE OFFICER'S OR EMPLOYEE'S STATE GOVERNMENTAL UNIT
27 DIRECTOR, AND THE DIRECTOR OF THE STATE GOVERNMENTAL UNIT SHALL FORWARD THE
28 REQUEST WITH A WRITTEN RECOMMENDATION TO THE DIRECTOR OF THE DEPARTMENT OF
29 ADMINISTRATION. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL
30 PROVIDE A WRITTEN DECISION AND JUSTIFICATION WITHIN FIFTEEN BUSINESS DAYS

1 AFTER THE RECEIPT OF THE COMPLETE REQUEST. THE DIRECTOR OF THE DEPARTMENT OF
2 ADMINISTRATION MAY NOT APPROVE WAIVER REQUESTS FOR MATTERS STILL IN
3 EVALUATION OR WITHIN SIX MONTHS FOLLOWING THE CONTRACT AWARD. IF THE
4 REQUESTING PARTY IS THE DIRECTOR OR A DEPUTY DIRECTOR OF A STATE GOVERNMENTAL
5 UNIT, THE REQUEST FOR A WAIVER AND ALL WRITTEN MATERIALS, INCLUDING A
6 DIRECTOR RECOMMENDATION, MUST BE FORWARDED TO THE GOVERNOR FOR A FINAL
7 DECISION, EXCEPT THAT THE DIRECTOR MAY NOT MAKE ANY RECOMMENDATION OR
8 DETERMINATION ON THE DIRECTOR'S OWN REQUEST."

9 Reletter to conform

10 Page 12, between lines 15 and 16, insert:

11 "G. BEGINNING OCTOBER 1, 2014, IF AN AGENCY USES A QUALIFIED VENDOR
12 LIST OF PERSONS OR ENTITIES THAT ARE ELIGIBLE TO BE SELECTED TO DESIGN,
13 DEVELOP, IMPLEMENT OR CONSTRUCT ANY FORM OF PROJECT ASSOCIATED WITH THE LIST,
14 ANY PROCUREMENT OFFICER WHO WAS ASSIGNED TO WORK EVALUATING OR APPROVING THE
15 VENDOR LIST OR ANY EMPLOYEE HAVING A SIGNIFICANT PROCUREMENT ROLE IN
16 DEVELOPING THE VENDOR LIST SHALL NOT ACCEPT AN OFFER OF EMPLOYMENT FROM OR
17 HAVE EMPLOYMENT DISCUSSIONS WITH A VENDOR ON THE LIST WITHIN ONE YEAR AFTER
18 THE INITIAL PUBLICATION OF THE LIST OR ACCEPT AN OFFER OF EMPLOYMENT FROM OR
19 HAVE EMPLOYMENT DISCUSSIONS WITH A NEWLY ADDED VENDOR WITHIN ONE YEAR AFTER
20 THE VENDOR IS ADDED TO THE ORIGINAL LIST. IF A VENDOR FROM AN APPROVED LIST
21 OF QUALIFIED VENDORS IS AWARDED A CONTRACT THAT IS ASSOCIATED WITH THE LIST,
22 A PROCUREMENT OFFICER INVOLVED IN SELECTING THE VENDOR OR AN EMPLOYEE HAVING
23 A SIGNIFICANT PROCUREMENT ROLE IN SELECTING THE VENDOR SHALL NOT ACCEPT AN
24 OFFER OF EMPLOYMENT FROM OR HAVE EMPLOYMENT DISCUSSIONS WITH THAT VENDOR
25 WITHIN ONE YEAR AFTER THAT VENDOR IS AWARDED THE CONTRACT."

26 Reletter to conform

27 Between lines 27 and 28, insert:

28 "J. THIS SECTION DOES NOT APPLY TO A PROCUREMENT OFFICER OR EMPLOYEE
29 WHO IN GOOD FAITH RELIES ON A DETERMINATION ISSUED BY THE DIRECTOR PURSUANT

- 1 TO SUBSECTION D OF THIS SECTION THAT THE PROCUREMENT OFFICER OR EMPLOYEE HAS
- 2 NOT HAD A SIGNIFICANT PROCUREMENT ROLE."
- 3 Amend title to conform

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