



**MARK BRNOVICH**  
ATTORNEY GENERAL

**OFFICE OF THE ARIZONA ATTORNEY GENERAL**  
**APPEALS & CONSTITUTIONAL LITIGATION DIVISION**

**LINLEY WILSON**  
DEPUTY SOLICITOR GENERAL

March 23, 2020

Re: Concerns Relating to COVID-19 and Procurement Procedures That Apply to School Districts Under Arizona Law

This Office has been asked to opine on the impact of COVID-19 in light of legal requirements that apply to school districts under Title 7, Chapter 2 of the Arizona Administrative Code (“A.A.C.”).<sup>1</sup> Specifically, this informal opinion sets forth examples of options available under Arizona law to school districts that may encounter logistical challenges presented by COVID-19.

As a preliminary matter, school districts are advised to review the *Guidance to Schools on COVID-19* and *Pandemic Preparedness Guidance to Schools*, which the Arizona Department of Education (“ADE”) issued to support district and charter leadership during this COVID-19 pandemic.<sup>2</sup> As relevant here, “[s]chool closure is NOT a complete shutdown of school operations” and “staff are still expected to engage in work-related activities” during a school closure. See ADE, *School Closures: Clarifications and Guidance* (updated March 20, 2020).

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<sup>1</sup> See Arizona State Board of Education, Rules <https://azsbe.az.gov/rules> (explaining that these rules “are found in Title 7, Chapter 2 of the Arizona Administrative Code”) (last visited March 20, 2020). The rules are available at [https://apps.azsos.gov/public\\_services/Title\\_07/7-02.pdf](https://apps.azsos.gov/public_services/Title_07/7-02.pdf) (last visited March 20, 2020).

<sup>2</sup> See ADE, *Guidance to Schools on COVID-19*, available at <https://www.azed.gov/communications/2020/03/10/guidance-to-schools-on-covid-19/> (published March 10, 2020 and last updated March 20, 2020), and ADE, *Pandemic Preparedness Guidance to Schools*, available at [https://www.azed.gov/communications/files/2020/03/ADE-Pandemic-Preparedness\\_RVSD3.2020.pdf](https://www.azed.gov/communications/files/2020/03/ADE-Pandemic-Preparedness_RVSD3.2020.pdf) (last updated March 12, 2020).

Schools should implement a “continuity of operations” plan that includes, among other things, identifying: (1) “[p]rotocol for adjusting staffing to maintain essential functions”; and (2) “[e]ssential contracts” that “must, may, or cannot be continued[.]” *See ADE, Pandemic Preparedness Guidance to Schools* at 9. School districts that develop a continuity of operations plan will be better equipped to address issues relating to COVID-19, including those that implicate school districts’ legal obligations.

Under Arizona law, the rules that govern “procurement practices for all school districts in this state” are consistent with procurement practices under A.R.S. § 41–2501 *et seq.* *See* A.R.S. § 15–213(A)(1). One such practice is a “competitive sealed bidding” process that awards contracts for goods and services. *See* A.A.C. R7-2-1021 to R7-2-1033 (governing “competitive sealed bidding”); *see also* A.A.C. R7-2-1041 to R7-2-1050 (governing “competitive sealed proposals”); A.R.S. § 41–2533(A). School districts are required to “maintain a record of bids and modifications received for each invitation for bids,” “record the time and date when each bid or modification is received,” and “store each unopened bid or modification in a secure place until the bid due date and time.” A.A.C. R7-2-1029(A).

Additionally, bids “shall be opened publicly at the date, time and place designated in the invitation for bids in the presence of one or more witnesses.” A.A.C. R7-2-1029(B); *see also* A.R.S. § 41–2533(D). “The name of each bidder, the amount of each bid, and other relevant information deemed appropriate by the school district shall be recorded” and this record “shall be available for public inspection.” A.A.C. R7-2-1029(B); *see also* A.R.S. § 41–2551 (“Record of procurement actions”).

To the extent adjustments to the bidding process are necessary in light of COVID-19, school districts may amend an invitation for bids under A.A.C. R7-2-1026. For example, a

school district may “[s]et a later bid due date and time if the school district determines that an extension is advantageous to the school district[,]” A.A.C. R7-2-1026(A)(5), or extend “the bid due date and time” if it “does not permit sufficient time for bid preparation[,]” A.A.C. R7-2-1026(C).

Emergency procurement procedures outlined in A.A.C. R7-2-1055 and A.A.C. R7-2-1056 are also available when an emergency condition, such as an epidemic, “creates an *immediate* and serious need for materials, services, or construction that cannot be met through normal procurement methods and seriously threatens the functioning of the school district, the preservation or protection of property or the public health, welfare or safety.” A.A.C. R7-2-1055(A) (emphasis added).<sup>3</sup> School districts are required to “designate a board member or members or school district official or officials authorized to make emergency procurements[.]” A.A.C. R7-2-1055(C). In addition to other requirements set forth in these rules, school districts must “keep a record of all emergency procurements pursuant to R7-2-1086.” A.A.C. R7-2-1056(C).

School districts must continue adhering to these rules while navigating the practical challenges presented by COVID-19. For example, if sealed bids are accepted via email, school districts must take steps to ensure that the sealed bids are “store[d] ... in a secure place until the bid due date and time.” *See* A.A.C. R7-2-1029(A). And the requirement under A.A.C. R7-2-1029(B) that bids be “opened publicly ... in the presence of one or more witnesses” could be satisfied through a remote meeting (if technologically feasible). School districts could also identify whether any bid due dates could be amended under the procedures in A.A.C. R7-2-1026.

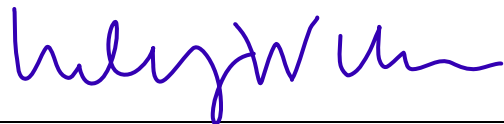
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<sup>3</sup> An emergency procurement must “be limited to the materials, services, or construction necessary to satisfy the emergency need.” A.A.C. R7-2-1055(B).

In the event of emergency procurements, the rules generally require the designated member or school official to “[c]onvene a meeting of the governing board to approve the emergency procurement,” *see* A.A.C. R7-2-1055(D)(4), but this meeting could be conducted remotely. And “[i]f the nature of the emergency does not permit convening a meeting of the governing board to approve [an] emergency procurement,” A.A.C. R7-2-1056 establishes the procedure school districts should follow.

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In the midst of this public health emergency, school districts must ensure that their procurement procedures comply with the law, which is designed “to promote overall economy for the purposes intended and encourage competition in satisfying this state’s needs” without being “unduly restrictive.” A.R.S. § 41–2565. As ADE notes, “[e]ffective business operation plans will assist in keeping schools operational and being better prepared to resume full operations when appropriate.” ADE, *Pandemic Preparedness Guidance to Schools* at 9.



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Linley Wilson  
Deputy Solicitor General