



PIMA COUNTY BOARD OF SUPERVISORS
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ALLY MILLER
SUPERVISOR

MEMORANDUM

Date: **October 15th, 2014**

To: Robin Brigode, Clerk of the Board

From: Ally Miller, District 1 Supervisor
Pima County Board of Supervisors

Re: **Goldwater Institute Letter Regarding Possible Legal Action on Gift Clause Violations**

Please place the following item on the **October 21st, 2014** Board of Supervisors **Agenda Addendum**:

Discussion and action regarding possible responses to the Goldwater Institute's October 10, 2014 letter to the Chair threatening legal action, including possible adoption of a new policy, or change to an existing policy, regarding individual Supervisors' allocations of office operating expenses to outside organizations and non-profit agencies.



ATTORNEY/CLIENT PRIVILEGED M E M O R A N D U M

Pima County Attorney's Office

Civil Division

32 North Stone Ave, Suite 2100

Phone 520.740.5750 Fax 520.620.6556

This is a privileged attorney-client communication and should not be disclosed to persons other than Pima County officials and employees involved in the matter that is the subject of the communication. The privilege is held by Pima County and can be waived only by an official action of the Board of Supervisors.

To: Hon. Supervisor Ally Miller

From: Regina Nassen, Deputy County Attorney
Tobin Rosen, Deputy County Attorney
Chris Straub, Chief Civil Deputy County Attorney

Date: October 6, 2014

Subject: Discretionary Small Awards by Individual Supervisors

Question Presented.

Supervisor Miller, you have asked whether you, as a member of the Pima County Board of Supervisors, can lawfully make small, discretionary, non-competitive awards to non-profit agencies or government organizations in the community, using funds budgeted for the operation of your individual Board-member office. These small awards would not be approved by the Board as a whole, nor would there be an associated formal contract with the recipient; the awards would be made by you, as an individual supervisor, and paid pursuant to Board Policies D29.3 and D29.4.¹ Per Board of Supervisors Policy, our office does not individually review or approve such expenditures,

¹ Section XI(E) of Board Policy D29.4, *Contracts Policy*, discusses "programs for awarding County funds to federally tax-exempt non-profit corporations and government agencies." The Policy indicates that, generally, such funding awards must be approved by the Board as a whole, and that the County will enter into a standard form of contract with the award recipient. Small funding awards, however—those that are less than \$5,000—"may be authorized and paid pursuant to Board Policy D29.3." That latter policy, the *Small Purchase Policy*, does not reference these funding awards specifically, but allows small purchases to be made by departments without formal competition, and allows payments to be issued based on a "Payment Request" or through use of a P-Card rather than pursuant to a formal contract. The small-award process described therefore appears to comply with these policies when read together.

nor does the Procurement Department, in the absence of a specific request.² However, such expenditures are subject to audit by the Finance and Risk Management Department.³

As a preliminary matter, we must point out that we are not advising you here in your individual, personal capacity. Our client is Pima County, and we generally provide representation to the County by advising the Board of Supervisors as a whole. Nevertheless, the County Attorney does, on occasion, advise individual County officers on matters relating to the duties of their offices.⁴ It is in that role—as the County’s civil lawyer advising you in your official capacity on a matter relating to the duties of your office, and not as your personal lawyer—that the Pima County Attorney’s Office is advising you here. Indeed, the County Attorney has an obligation to institute an action in the name of the County, against members of the Board or others, to recover funds that she believes have been illegally spent.⁵ Because individual supervisors could be held personally liable for authorizing illegal expenditures of County funds,⁶ you may wish to consult your own personal lawyer as well.

Legal Requirements.

General Principles:

Generally speaking, to be legal, a County expenditure must (1) be within the statutory powers of the County; (2) not constitute an illegal gift of County funds to a private party in violation of Ariz. Const. art. 9, § 7 (the “Gift Clause”); and (3) be made from appropriately budgeted funds.

Statutory Authority:

The County has those powers—and *only* those powers—expressly granted or necessarily implied by statute; a payment for a purpose that is not authorized by statute is illegal.⁷ The County’s outside-

² Board of Supervisors Policy D29.4, *Contracts Policy*, § VI(A).

³ Board of Supervisors Policy C2.6, *Internal Audit Function*.

⁴ A.R.S. § 11-532(7).

⁵ A.R.S. § 11-641(B). If a taxpayer makes a demand on the county attorney to bring such an action, and the county attorney does not do so, the taxpayer can institute an action. A.R.S. § 11-642.

⁶ A.R.S. § 11-641 through 11-643. See *Maricopa County v. Rodgers*, 52 Ariz. 19, 22, 78 P.2d 989, 990 (1938) (statute of limitations will not bar an action to recover public funds) (citing *City of Bisbee v. Cochise County*, 52 Ariz. 1, 78 P.2d 982 (1938)); *Avery v. Pima County*, 7 Ariz. 26, 38-40, 60 P. 702, 706-07 (1900) (supervisors are liable for an illegal payment regardless of “however excusable or unavoidable it may be, or however honest and diligent they may have been in the matter”); cf. *Webster v. Parks*, 17 Ariz. 383, 389-91, 153 P. 455, 458 (1915) (supervisors are liable for an illegal expenditure regardless of how “honest and conscientious” their actions were, but a mere procedural irregularity in approving or processing the expenditure will not give rise to liability if the payment is for a proper purpose). See also A.R.S. § 35-301, making it a class 4 felony for a “public officer ... charged with the receipt, safekeeping, transfer or disbursement of public money” to “[w]ithout authority of law, appropriate[] it, or any portion thereof, to his own use, or to the use of another.”

⁷ See, e.g., *Hartford Acc. & Indem. Co. v. Wainscott*, 41 Ariz. 439, 449, 19 P.2d 328, 331 (1933) (members of the Maricopa County Board of Supervisors held liable for repayment of amounts used to pay liability-insurance premiums for County vehicles because, at that time, the County could not be held liable for torts committed by its employees, and therefore the insurance policies only protected the employees rather than the County, and the County was not authorized to insure its employees against such liability).

agency program is based on the rationale that, if the County has the authority to undertake a particular activity or provide a particular service to the public, it can “outsource” that activity by providing funding to another entity to do the same. Likewise, the small awards can, we think, be justified if they are being used to fund activities that the County itself has statutory authority to undertake. The County⁸ has statutory authority to, among other things:⁹

- Conduct economic-development activities, which are very broadly defined.¹⁰
- Provide funds for affordable housing, so long as the property being used for the housing is restricted in manner that maintains its affordability.¹¹
- “Provide for the care and maintenance of the sick of the county,” “erect and maintain hospitals for that purpose, and “establish, maintain and operate” medical clinics.”¹²
- Fund summer youth employment and training programs for at-risk youth.¹³
- Impound, care for, and spay/neuter stray dogs and cats.¹⁴
- Provide for parks and recreational areas.¹⁵

Any County official making such a small award should ensure that it is being used to fund an activity that is within the County’s authority. We can provide assistance in determining the scope of that authority.

The State Constitution’s Gift Clause:

The Arizona Supreme Court has held that, to comply with the Gift Clause, a payment of public funds to a private entity¹⁶ must be for a public purpose and must be reasonable in amount in comparison to

⁸ The statutes generally vest this authority in the Board of Supervisors. The Board, by approving the policies cited previously, has arguably delegated authority to individual departments and offices within the County to make the type of small awards we are concerned with here, though the delegation is not express.

⁹ Obviously, the County has *many* powers and authorities; we are providing here citations to just a few statutes that seem likely to provide authority for the types of awards about which you have inquired.

¹⁰ A.R.S. § 11-254.04 authorizes the Board to “appropriate and spend public monies for and in connection with economic development activities,” which is defined as “any project, assistance, undertaking, program or study, whether within or outside the boundaries of the county, including acquisition, improvement, leasing or conveyance of real or personal property or other activity, that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the county.”

¹¹ A.R.S. § 11-251.10. The statute technically refers to buying and conveying interests in real property. Logically, however, providing funding to another entity to acquire or improve real property is the functional equivalent of that.

¹² A.R.S. § 11-251(5) & (39).

¹³ A.R.S. § 11-1042.

¹⁴ A.R.S. §§ 11-1013 & 11-1022.

¹⁵ Arizona Revised Statutes, Title 11, Chapter 7, Article 2.

the consideration that the private entity is providing in exchange for the funds.¹⁷ Courts are very deferential regarding a political branch's determination of what constitutes a public purpose. They are less deferential when it comes to valuation of consideration, which is based on the fair market value of what the party receiving the payment is promising to provide, rather than speculative assessments regarding "public benefits." Nevertheless, the Gift Clause requires only that the value of what the public entity is receiving not be "grossly disproportionate" to what it is paying.

As noted above, the County's outside-agency contracts require the non-profit organization receiving the County funds to carry out certain activities or provide certain services that further a public purpose. Therefore the public benefit requirement is satisfied with respect to those expenditures. And the County funds provided to the outside agency are used to cover the expenses (often just a portion of the expenses) incurred by the agency in carrying out the required activity. The reasonableness of those costs is reviewed as part of the outside-agency program process;¹⁸ therefore, the outside-agency expenditures also satisfy the second prong of the Gift Clause test. The small awards in question would not be accompanied by formal written contracts, but—provided that reasonable assurances have been obtained that the funds are being used in a manner that satisfies the Gift Clause, and there is some documentation to demonstrate that—the expenditures should survive a Gift Clause challenge.

Statutory Budget Laws:

After adoption of a final budget, a county may not "spend money for a purpose not included in its budget" or "spend money ... in a fiscal year in excess of the amount stated for each purpose in the finally adopted budget for that year."¹⁹ If an expenditure of County funds is made for a purpose to which those funds are not allocated in the budget, the funds are considered to have been spent illegally.²⁰

The 2014/15 budget allocates approximately \$400,000 to each supervisor's office.²¹ This amount is divided between "Personnel Services" and "Operating Expenses." The small awards we are

¹⁶ The Gift Clause is generally inapplicable to a transfer of funds to another government entity although, it would of course be problematic if the transfer is done with the understanding that the funds will be used by the receiving entity for a purpose that violates the gift clause.

¹⁷ *Turken v. Gordon*, 223 Ariz. 342, 348-349, ¶¶ 22 & 28, 224 P.3d 158, 164-165 (2010). In *Turken*, the Court implied that it might not even subject certain "non-contractual public expenditures, such as direct assistance to the needy" to a Gift Clause analysis. *Turken* 223 Ariz. at 348, n.4. That appears, however, to be limited to services rendered by a government entity *directly* to benefitted individuals, not payments to organizations that utilize the funds to provide a public benefit.

¹⁸ See Board of Supervisors Policy E 36.1, *Review of Requests and Monitoring of Contracts for Discretionary Funds Allocated to Outside Agencies for Economic Development, Health and Social Services*.

¹⁹ A.R.S. § 42-17106(A).

²⁰ See, e.g., *City of Phoenix v. Kidd*, 54 Ariz. 75, 85, 92 P.2d 513, 518 (1939) *on reh'g*, 54 Ariz. 123, 94 P.2d 428 (1939) (a contract that requires an expenditure in violation of the budget law "is void and cannot be enforced"); *Coleman v. Lee*, 58 Ariz. 506, 508-509, 121 P.2d 433, 434-435 (1942); *Lee v. Coleman*, 63 Ariz. 45, 50, 159 P.2d 603, 605 (1945); *Barbee v. Holbrook*, 91 Ariz. 263, 264-65, 371 P.2d 886, 887 (1962).

²¹ See Pima County Fiscal Year 2014/15 [Recommended Budget](#), p. 2-8.

analyzing here would be paid out of “operating expenses” allocated to the office of the supervisor making the award. We could not find a copy of the final budget online but, if it is like last year’s final budget, it does not contain any more detail than that basic breakdown. “Operating expenses” is a broad category that might legitimately encompass numerous large and small expenses of various types, including, arguably, small awards like those we are discussing. Therefore, if the awards are made using these funds, they would arguably be made from properly budgeted funds.

Someone challenging the legality of these small awards could, however, make a colorable argument that they cannot be fairly characterized as “operating expenses,” which might normally be understood to mean office-related expenses like furniture, equipment, supplies, etc. Do these awards really fall within the stated “purpose”? Paying the awards from the office’s operating-expense budget is arguably unanticipated since these types of expenditures are more typically made under the budgets of other departments, such as Community Services, Employment & Training, and Economic Development & Tourism.²² Therefore, the “operating expense” label does little to alert taxpayers to how the money is being spent, which is one of the purposes of the budget laws.²³ The fact that the awards are not reviewed and approved by the Board as a whole in a public meeting arguably compounds the problem.

On the other hand, lump-sum appropriations are clearly permissible; the adopted budget need not spell out each specific item or type of expense that can be paid out of a more generally labeled line item.²⁴ There is also a legitimate reason for not making the final budget too detailed. Because the Board as a whole must vote to approve a transfer of funds from one final-budget item to another, a more detailed final budget would create significant administrative difficulties.²⁵ And the Recommended Budget *does* show an itemized breakdown of supervisors-office “Operating

²² See Recommended Budget, p. 3-2 (“The Recommended Budget includes \$4,990,328 for outside agencies. This amount includes: \$3,435,167 in the Community Development & Neighborhood Conservation department; \$1,246,775 in the Economic Development & Tourism department, \$123,000 Community & Economic Administration, and \$185,386 in other departments.”).

²³ *City of Phoenix v. Kidd*, 54 Ariz. 75, 83, 92 P.2d 513, 517 (1939) *on reh'g*, 54 Ariz. 123, 94 P.2d 428 (1939) (“‘The evident purpose of the ‘Budget Law’ is to establish the plan of ‘paying as you go’; also to allow the taxpayer an opportunity to object to any proposed expenditure, or the amount thereof, by the board of supervisors’”) (quoting *Fullen v. Calhoun*, 39 Ariz. 40, 3 P.2d 786, 787 (1931)).

²⁴ The Arizona Supreme Court, in *Coleman v. Lee*, a 1942 case, rejected a claim that the board of supervisors could not legally pay for services related to administration of an indigent healthcare program from a lump-sum budget item labeled simply “indigent sick.” 58 Ariz. 506, 509, 121 P.2d 433, 435 (1942) (“we see no reason why the board of supervisors could not make the appropriation in the budget in a lump sum, leaving to those whose duty it is to spend such sum the power and right to apportion it as the law permits”). Successful challenges, in contrast, involved payments in excess of the amount budgeted for the appropriate line item. See, e.g., *City of Phoenix v. Kidd*, 54 Ariz. 75, 90, 92 P.2d 513, 519 (1939) *on reh'g*, 54 Ariz. 123, 94 P.2d 428 (1939) (illegal for City to pay workers additional amounts to comply with increased minimum wage law that was passed after adoption of City budget because that would cause the amount spent to exceed amount budgeted); *Lee v. Coleman*, 63 Ariz. 45, 50, 159 P.2d 603, 605 (1945) (travel expenses of supervisors traveling to road-related meetings were incorrectly paid from general road fund rather than from funds budgeted specifically for board-of-supervisors-travel; therefore, supervisors had to repay any amounts that would have caused the travel-fund budget to be exceeded if the expenses had been paid from that fund as required); *Barbee v. Holbrook*, 91 Ariz. 263, 264-65, 371 P.2d 886, 887 (1962) (action to recover from supervisors funds paid in excess of budget).

²⁵ A.R.S. § 42-17106(B).

Expenses” that includes a line item (\$42,295) for “Payments to Agencies,”²⁶ which we assume refers to small awards of this type. That greater detail arguably informed taxpayers, before adoption of the final budget, that expenditures of this type were being authorized. Individual small awards to agencies can also be monitored by the public through the [Open Books](#) website.

Conclusion.

We conclude that a supervisor’s office can legally make small funding awards from its budgeted operating expenses, provided that the award is for a specific documented public purpose that is within the County’s statutory authority, and is reasonable in amount. If someone were to challenge such a small award based on an alleged violation of the budget law, it is possible that a court would find it to be problematic, but we believe it is more likely than not that a court would uphold the expenditure.

Recommendation.

If you wish to eliminate any question regarding the legal authority for these small awards, the Board of Supervisors could adopt a policy, or amend an existing policy, to explicitly delegate authority for these awards to individual supervisors. Alternatively, the Board could affirmatively prohibit such awards. We are, as always, available to review proposed policy language before it is presented to the Board to help determine whether it will achieve the Board’s desired goal and not result in unintended consequences.

Cc: Sharon Bronson, Chair, Pima County Board of Supervisors
Richard Elías, Vice-Chair, Pima County Board of Supervisors
Ramón Valadez, Supervisor, District 2
Ray Carroll, Supervisor, District 4
C.H. Huckelberry, County Administrator
Barbara LaWall, Pima County Attorney
Amelia Cramer, Chief Deputy County Attorney

²⁶ See Recommended Budget, p. 2-11.



PIMA COUNTY, ARIZONA
BOARD OF SUPERVISORS POLICY

Subject:

Pima County Department Purchase Responsibility

Policy Number

D 29.9

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I. Purpose

The purpose of this Policy is to define responsibility for the purchase of goods and services and to provide guidelines to assure that goods and services are purchased in accordance with the Pima County Procurement Code, Board Policies, and Procurement Procedures.

II. Applicability

This Policy applies to the purchase of goods and services conducted by all County departments and employees regardless of the method of purchase. It applies to purchases made by County contract, intergovernmental agreement, purchase order, payment request, petty cash, Purchasing Card (P-Card), or any other form of purchasing transaction.

III. Policy

- A. Purchases made by Pima County Departments shall comply with the provisions of the Pima County Procurement Code, Board Policies, and Procurement Procedures.
- B. Purchases made by County employees which are not consistent with the provisions of the code, policies or procedures shall be considered unauthorized or improper purchases, regardless of the intended use or County need for the purchase.
- C. Departments shall ensure full and equitable economic opportunities to persons or businesses that compete for business with Pima County government, including small business enterprises.
- D. Departments shall provide increased economy in purchase activities and maximize to the fullest extent practicable the purchasing value of public monies.
- E. To ensure the County obtains goods and services at the most competitive pricing, Departments shall exercise discretion in the use of their purchase authority and shall use contracts established by the Procurement Department whenever possible.
- F. Departments shall consider the cumulative annual volume of their anticipated need and shall refer major purchases to the Procurement Department.

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IV. Responsibility

- A. Department Heads are responsible for oversight of all purchase transactions conducted by employees within their respective departments.
- B. Department Heads will be subject to disciplinary action, up to and including termination, for unauthorized or improper purchases they authorize.
- C. Department Heads will be subject to disciplinary action, up to and including termination, for unauthorized or improper purchases made by an employee of their department when that employee is acting under their direction or with authority delegated by the Department Head.
- D. Department Heads will be subject to disciplinary action, up to and including termination, for failure to establish or enforce internal procedures necessary to prohibit and detect unauthorized or improper purchases.
- E. Managers and supervisors will be subject to disciplinary action, up to and including termination, for unauthorized or improper purchases made by them or an employee while acting under their supervision or direction.
- F. Employees will be subject to disciplinary action, up to and including termination, for unauthorized or improper purchases made by them or another employee while acting under their supervision or direction.
- G. Purchasing Cardholders shall be disciplined consistent with this policy and the terms and conditions of the Pima County Purchasing Card Cardholder Agreement signed by each Cardholder.
- H. Purchases made to fulfill a County need, made in a manner contrary to the provisions of the Pima County Procurement Code, Board Policies, and Procurement Procedures, shall be considered unauthorized or improper purchases.
- I. Emergency purchases necessary to protect the public health, welfare or safety shall not be considered unauthorized or improper purchases when conducted in the manner prescribed by the Pima County Procurement Code and Board Policies.

V. Procedure

- A. Department Heads must establish internal procedures to regulate and monitor purchase activity. These procedures must ensure that necessary checks and balances are in place to reduce the potential for unauthorized or improper purchases.
- B. Department Heads must ensure that internal procedures are followed and that appropriate corrective action is taken to remedy deficiencies.

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- C. Department Heads must monitor purchase activities to ensure the prudent use of public funds and safeguard the interests of the County.
- D. Department Heads must hold their managers, supervisors, and employees responsible for unauthorized or improper purchases and take prompt and appropriate disciplinary action when necessary.
- E. Department Heads must report all instances of unauthorized or improper purchases to the Procurement Director. The Procurement Director will provide guidance and assistance to the Department Head to prevent further occurrences.
- F. The Procurement Director will report all instances of unauthorized or improper purchases to the County Administrator when the Procurement Director identifies repetitive occurrences or a Department Head has failed to take appropriate action.
- G. Upon receiving a report from the Procurement Director, the County Administrator shall direct the Department Head to submit a written report within ten days. The report must include:
 - 1. A detailed description of the incident;
 - 2. Total cost to the County;
 - 3. Reimbursement made to the County or costs paid directly by, Purchasing Cardholders pursuant to the terms and conditions of the Pima County Purchasing Card Cardholder Agreement;
 - 4. List of employees, including managers and supervisors, who had knowledge of the incident;
 - 5. Disciplinary action taken;
 - 6. Corrective action taken to prevent further occurrences.
- H. After reviewing the report, the County Administrator shall determine if the Department Head has taken appropriate corrective action and has implemented adequate procedures to prevent further occurrences or if additional disciplinary action or corrective measures are required.

Effective Date: April 1, 2011



PIMA COUNTY, ARIZONA BOARD OF SUPERVISORS POLICY

Subject: Budget Accountability	Policy Number	Page
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PURPOSE

To establish guidelines for transparency and accountability of expenditures incurred by County departments.

BACKGROUND

Pursuant to the Constitution and Statutes of Arizona governing the financial responsibilities of counties:

1. The Board of Supervisors must annually adopt a balanced budget for the operation of Pima County government.
2. Within that annual budget the Board has the authority and responsibility to determine the individual budgets of all elected and appointed County officers.
3. Elected and appointed officers of the County may not expend public monies in excess of those appropriated by the Board.
4. Elected and appointed officers of the County may not expend public monies for a purpose not included in the annual budget adopted by the Board or expend public monies in excess of the amount specified for each purpose in the budget.
5. In order to perform their financial duties the Board may examine and scrutinize all accounts and financial transactions of County officers having the care, management, collection or disbursement of public monies.
6. The Board of Supervisors acting in its legislative capacity has exclusive authority to annually levy such tax on the property of the County as is necessary to fund the expenses of County government at a level the Board determines to be appropriate.

POLICY

A. The County Administrator shall, by Administrative Procedure, prepare appropriate budgetary controls to identify revenues and expenditures by elected and appointed officers in sufficient detail for the Board of Supervisors to oversee compliance with Constitutional and statutory financial responsibilities and compliance with the annual appropriations by the Board of Supervisors. Such controls should include, among other controls, periodic reports of significant variances from the major revenue and expenditure categories contained in the adopted budget.

B. Budget Exceedance

The County Administrator shall provide each director or officer of a department of the County a monthly report setting forth actual expenditures and revenues to date of their department and a comparison to the adopted budget.

If at any time after the fiscal year to date report for the month of December the net fund impact of a department is ten percent more negative than the adopted budget based upon a straight line apportionment of the adopted budget throughout the fiscal year, the director or officer of that department shall immediately

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develop and implement a budget remediation plan to ensure that the department's budgeted net fund impact is not exceeded at the end of the fiscal year. Within ten days from the issuance of a monthly report showing a department's net fund impact to be ten percent more negative than the adopted budget the director or officer of that department shall submit to the Board of Supervisors through the County Administrator a written budget remediation plan or, if applicable, an alternative projection utilizing methodology other than straight line that more accurately predicts no negative variance in net fund impact of the department for the fiscal year.

If at the end of any fiscal year a department's net fund impact was more negative than that authorized by the adopted budget, then the director or officer of that department shall submit a report to the Board of Supervisors prior to September 1 describing what remedial actions were taken to avoid the budget exceedance and why such actions were inadequate.

D. Applicability

This policy applies to all departments and special districts of Pima County, whether under the supervision of an elected or appointed official, as identified in the adopted County Budget.

Revised: July 12, 2011



**PIMA COUNTY, ARIZONA
BOARD OF SUPERVISORS POLICY**

Subject:

Pima County Procurement Policy

Policy Number

D 29.2

Page

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I. Mission Statement

The Pima County Procurement Department, acting as the central public purchasing authority for Pima County, shall endeavor as its primary mandate to conserve public funds and conduct the procurement process in a fair, open, competitive, and ethical manner, within the provisions of applicable Arizona Revised Statutes and the County Procurement Code, in the best interest of Pima County.

II. Purpose

The purpose of this Policy is:

- A. To provide guidelines and clarification for implementation of the Procurement Code and to assure all procurements are carried out within the mandates of Arizona law and the County Code.
- B. To permit and give direction to the continued development of procurement procedures and practices.
- C. To make as consistent as possible the procurement practices of various Pima County departments.
- D. To provide for increased public confidence in the practices followed in public procurement.
- E. To identify and provide direction on County Procurement rules, including State law, Pima County Code, Board of Supervisors Policies and Procurement procedures regarding:
 - Authority and Responsibility of the Procurement Director;
 - Competitive Procurement and Recommendations for Award;
 - Conditions for Emergency, Limited Competition and No Substitute/Sole Source procurements;
 - Acceptance of Gifts and Rebates from Vendors
 - Conflict of Interest
 - Handling of Confidential or Proprietary Vendor Information
 - Development of Specifications and application of Sustainability initiatives; and
 - Vendor relations, including Small & Local Businesses.
- F. To promote cooperative, interactive, interdepartmental relations that assure the timely and cost-effective acquisition of supplies, equipment and services.
- G. To assure the highest level of ethical conduct in all business transactions.

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III. Applicability

- A. This Policy applies to all procurements initiated after the effective date of its adoption by the Board of Supervisors.
- B. This Policy applies to every expenditure of public funds for procurement, including, but not limited to, assistance monies, grant monies or other monies funneled through Pima County or any agency of Pima County. Nothing in this Policy or in procedures promulgated under this Policy shall prevent any Pima County agency or department from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.
- C. This Policy shall apply to all Pima County personnel associated in any way with the requisitioning or acquisition of any supplies, equipment or services.

IV. Authority of the Procurement Director

- A. The Procurement Director shall have authority to:
 - 1. Exercise authority set forth in the Procurement Code.
 - 2. Promulgate procurement procedures, covering procurement practices and requirements consistent with Arizona Revised Statutes, the Procurement Code and the Board of Supervisors Policies.
 - 3. Make sourcing decisions and awards on all procurements with a value of \$250,000 or less per year for a maximum contract term of 5 years.
 - 4. Dispose of surplus personal property pursuant to A.R.S. §11-251(9) and (56). Surplus equipment and materials that have little or no value or are unauctionable items shall be made available to local charitable organizations at no charge. Items which are determined to have sufficient value shall be saved for use by various County departments, auctioned, or otherwise disposed of as deemed appropriate by the Procurement Director.
 - 5. Make determinations of contractor responsibility.
 - 6. Terminate for Convenience or Cause contracts executed by the Procurement Director.
- B. Except as herein provided, no person shall purchase or make any contract within the scope of this policy other than through the Procurement Department and any purchase order or contract made contrary to the provisions hereof shall not be approved by Pima County.

V. Responsibility of the Procurement Director

The Procurement Director shall:

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- A. Report directly to the County Administrator.
- B. Develop and implement procedures that assure compliance with the Pima County Procurement Code, Board Policies, and with the relevant provisions of the Arizona Revised Statutes.
- C. Serve as Procurement Agent for Pima County.
- D. Where cost-effective, centralize procurement of all supplies, equipment, and services for all Pima County departments.
- E. Prepare, advertise, and issue solicitations, including through use of electronic documents and systems, and insure that the selection process is in compliance with this policy, procedures, the Procurement Code, and Arizona Revised Statutes.
- F. Facilitate the development of specifications for annual contracts for materials, supplies, equipment and contractual services.
- G. Evaluate solicitation responses and make recommendations for an award to the Board of Supervisors, as required.
- H. Issue procurement and purchasing agreement documents, including electronic documents, such as master agreements, purchase orders and contracts for materials and services pursuant to procedures set forth in Board Policy D 29.4.
- I. Review all Pima County contracts and either sign or prepare for Board of Supervisors' approval according to authorized value pursuant to Board Policy D 29.4.
- J.. Maintain a centralized contract file and retrieval system for all Pima County contracts.
- K. Maintain a vendor file and encourage and assist vendors in competing for Pima County business.
- L. Coordinate the disposal of Pima County's surplus and obsolete materials and equipment.
- M. Review all purchases that do not conform to the Board of Supervisors' policy, and either approve or deny the purchase.
- N. Ensure that:
 - 1. The needed quantity of supplies, equipment and service are procured in the most advantageous manner for Pima County, subject to funding limitations.
 - 2. Full and open competition is encouraged on all purchases.
 - 3. All applicable policies, procedures, rules, laws and regulations are complied with.

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4. Current developments in the purchasing profession, benefits of research on products, new products, market trends, trade associations and technical societies are utilized to assist Pima County in maintaining a more efficient and cost-effective system of purchasing.
5. The Procurement Department is responsive to the needs of the various departments.

VI. Competitive Procurement

The Pima County Procurement Department shall insure that a competitive environment exists for all Procurements. The following shall apply:

- A. All applicable policies, procedures, rules, laws and the Procurement Code shall be followed in all solicitation activities.
- B. Responses shall be opened in accordance with the Procurement Code by the Procurement Director or the delegated representative.
- C. The Procurement Director shall tabulate and analyze the responses received in answer to the solicitation, and in conjunction with the requisitioning department, shall verify that the responses meet specifications.

VII. Recommendations for Award

The Procurement Director shall prepare and post notice of recommendations for award on all formally advertised solicitations.

- A. If the requesting department finds the low bid or highest scoring proposal is acceptable, the Procurement Director shall prepare a notice recommendation for award to the low bid or highest scoring proposal.
- B. Except for procurements conducted under Title 34 of the Arizona Revised Statutes, if the requesting department finds the low bid or highest scoring proposal unacceptable, it will submit justification for award to other than low bid or highest scoring proposal to the Procurement Director. The Procurement Director will convene a meeting with representatives of the requesting department, the County Attorney's Office, and the cognizant buyer to review the bid evaluation and prepare a notice of recommendation for award based upon:
 - 1) Conformance to specifications,
 - 2) Intended use,
 - 3) Best interest of Pima County,
 - 4) Legal considerations,
 - 5) Procedural requirements, and
 - 6) Ethical considerations.

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- C. The Procurement Director may award all solicitations for amounts of \$250,000 or less per year. Bid awards more than \$250,000 per year shall be made by official action of the Board of Supervisors.
- D. The Clerk of the Board shall notify the Procurement Department of such Board action.

VIII. Emergency Procurement

Emergency procurement shall be conducted in accordance with the Procurement Code Section 11.12.060.

IX. No Substitute Procurements

- A. When the needs of a department can only be met by a particular product or service, the department shall submit justification in writing to the Procurement Director that a "no substitute procurement" is required. Such justification shall include a full and detailed explanation as to why no other make, model, etc., will satisfy the needs of the County.
- B. Upon approval by the Procurement Director, the buyer will proceed to seek maximum competition for the item in accordance with normal procurement procedure.
- C. Examples of no substitute procurement include, but are not limited to:
 - 1. Replacement parts or accessories for a specific piece of equipment.
 - 2. Specific chemicals or compounds to obtain a desired result or to sustain a warranty on specific equipment.
 - 3. Color, composition and other attributes must be an exact match to existing installations.
- D. This provision does not apply to procurements governed by A.R.S. Title 34.

X. Sole Source Procurement

A sole source contract may be awarded for materials or services without competition in accordance with the Procurement Code Sections 11.12.050. This provision does not apply to construction governed by A.R.S. Title 34.

XI. County Attorney Approval of Contracts

Contracts shall be approved as to form by the County Attorney before being submitted to the Contractor or the Board of Supervisors for approval per Board Policy D 29.4.

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XII. Gifts and Rebates

- A. All officers and employees of the County are expressly prohibited from accepting any gift, rebate, money or remuneration of any kind from any person, firm, company or corporation to which any purchase order or contract is or may be awarded.
- B. Gifts received are to be returned to the suppliers immediately with a letter explaining Pima County's policy.
- C. This prohibition does not apply to minor promotional items such as calendars, pens, paperweights, etc., which have little or no value.

XIII. Conflict of Interest

- A. Per ARS § 38-501 *et. seq.*, any Pima County officer or employee who has, or whose relative has, a substantial interest in any contract, sale, purchase, service or decision of Pima County shall make the interest known in the County's official records; and shall refrain from any participation in any capacity in the contract sale, purchase, service, or decision.
- B. Any officer or employee who has, or whose relative has a substantial interest in any contract, sale, purchase, service or decision of Pima County shall:
 1. Pursuant to County department procedures, make known that interest in the file maintained by the Clerk of the Board, and/or the Finance Department; and
 2. Refrain from voting or participating in any manner in the contract, sale, purchase, service or decision.
- C. Notwithstanding compliance with these requirements, an employee or employee's relative with a substantial interest may not supply equipment, materials, supplies or services to Pima County unless pursuant to an award or contract let after public competitive bidding in compliance with the Pima County Procurement Code, Board of Supervisors Policies, and Procurement Procedures.
- D. Matters of determination regarding substantial interest shall be determined in consultation with the Pima County Attorney's office, the County Administrator, the Procurement Director, Finance/Risk Management and the Department Head.

XIV. Specifications: Supplies, Equipment and Services

- A. Specifications for supplies, equipment, materials and services shall be as generic as possible to encourage maximum competition on all Pima County procurements.
 1. All specifications shall describe Pima County's requirements in a manner that does not unnecessarily exclude a material, service or construction item. Notwithstanding this requirement, County Departments, when applicable, shall incorporate the objectives of BOS

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Resolution 2007-84 into any set of specifications for the procurement of supplies, equipment and services.

2. Proprietary specifications shall not be used unless the Procurement Director determines that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of preparing specifications do not justify the use of proprietary specifications.
- B. To the extent practicable, Pima County shall use accepted commercial specifications and shall procure standard commercial materials.
 - C. Specifications must reflect the product which will reasonably perform the required function. Specifications should be stated in terms of minimum acceptable or acceptable ranges wherever possible. Absolutes are to be avoided unless they are essential. Excessive specifications are not in the best interest of the County.

To the extent practicable, specifications shall be developed in a manner that optimizes the achievement of the sustainability initiatives in Resolution No. 2007-84.

- D. Sustainable Community Preference.

Procurement solicitations utilizing qualitative criteria to evaluate proposals shall include criteria, with a weighting of not more than 5% of the total possible score, that recognize and consider the relative magnitude by which each proposal advances the sustainability initiatives of Resolution No. 2007-84. The evaluation and scoring of proposals for this criteria shall give relative preference to the proposal that best optimizes achievement of the initiatives as determined by the evaluation committee. The evaluation may include and not be limited to: (1) the resource extraction and manufacturing processes utilized; (2) distance and type of transportation required; (3) life-cycle costs; (4) amount of waste generated; (5) the recyclable content of the product, the product's capacity to be recycled or reused, and the product and packaging "take-back" policies of the manufacturer or distributor; (6) energy and water efficiency; and (7) socioeconomic benefits to Pima County which may include preference to firms that are located within Pima County.

XV. Small Business Enterprises (SBE) Participation

It is the policy of the Pima County Procurement Department to promote participation by Small Business Enterprises in County contracts.

- A. The Procurement Department shall develop and implement procedures that assure compliance with the County SBE Ordinance, Title 20 Pima County Code.
- B. The Procurement Department will advise all vendors and contractors of the County SBE Ordinance and the corresponding rules and procedures.

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XVI. Withdrawal or Modification of Bids/Proposals

A bidder/respondent may withdraw or modify its bid/proposal only in accordance with the County Procurement Code Section 11.12.010 G.

XVII. Business Opportunities for Pima County Vendors

It shall be the goal of the Procurement Department to afford opportunities to Pima County vendors in a manner consistent with the purpose of this Policy and the Procurement Objectives in Section XIX.

The following shall apply:

- A. Where a bid evaluation results in a tie bid, the recommendation shall be in favor of a Pima County vendor.
- B. The Procurement Department shall provide information to enhance vendors' knowledge pertaining to Pima County procurement practices.
- C. The Procurement Department will use its affiliation with regional commissions and business groups in developing new approaches to helping businesses gain entry to the Pima County procurement process.
- D. The Procurement Department shall maintain a vendor database and vendors shall be afforded an opportunity to submit their vendor information for inclusion in the vendor database.

XVIII. Public Information

Pursuant to A.R.S. § 39-121 et. seq., and A.R.S. §§§ 34-603(H), 604(H) in the case of construction or Architectural and Engineering services procured under Title 34, Chapter 6, all information submitted in response to a solicitation shall be deemed to be public information and shall be made available to the public in accordance with the County Procurement Code, except that to the extent the vendor designates and the Procurement Director concurs, trade secrets or other proprietary data shall be regarded as confidential. The disclosure of information received in a procurement conducted under Chapter 6 of A.R.S. Title 34 shall be governed by the above cited sections of that Chapter.

If the Procurement Director does *not* concur that the information constitutes trade secret or proprietary data, the information is subject to immediate release pursuant to A.R.S. § 39-121 et. seq. unless otherwise provided in the solicitation or contract.

If the Procurement Director *concurs* that the information reasonably constitutes trade secret or proprietary information, the following procedures shall apply:

Any records submitted in response to a solicitation that VENDOR believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by VENDOR **prior** to submittal.

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Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. §39-121 et seq., COUNTY shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to VENDOR of the request for release, unless VENDOR has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. VENDOR shall be notified of any request for such release on the same day of the request or as soon thereafter as practicable.

COUNTY shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall COUNTY be in any way financially responsible for any costs with securing such an order.

XIX. Vendor Relations

It is a primary purchasing responsibility to cultivate and maintain good vendor relations. This policy is adopted as a guide to the development of these relations.

The Procurement Department will:

- A. Promote fairness and integrity in all business dealings.
- B. Provide all vendors with an opportunity for a full, fair and courteous hearing on any subject that is justified by the nature of their product or service.
- C. Insure that all competition will be kept open and fair without favoritism.
- D. Not knowingly take advantage of a vendor error.
- E. Assure that strict truthfulness is observed in all transactions with vendors.
- F. Request a quote from a vendor only when the buyer reasonably expects to consider the quote at final determination.
- G. Conduct activities in such a manner that every Vendor will value Pima County business and will make every effort to return maximum ultimate value for every dollar received.

XX. Procurement Objectives

The Procurement Department will develop and administer a competent Procurement system through the following:

- A. Select and employ personnel that are appropriate for the respective procurement activities and promote development through training, professional organizations and educational opportunities.

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- B. Through competition, acquire the best possible price considering quality, quantity, safety, delivery, service, and other factors.
- C. Conduct a Procurement program that will achieve maximum benefit and minimize the cost.
- D. Improve service to Pima County through communications with departments on purchasing matters and vendor relations.
- E. Cooperate with all departments and assist wherever possible in effective improvements that will lower the cost of purchasing items or services.
- F. Promote standardization of supplies and equipment specifications of all types, wherever practicable.
- G. Provide support and assistance, wherever practicable, to all governmental entities to reduce costs and improve service.
- H. Avoid any practice that will detract from the good reputation of Pima County.

Revised Dates: September 1992
August 18, 1997
November 14, 2000
December 17, 2002
November 18, 2003
May 3, 2005
September 2005
August 21, 2006
April 15, 2008
April 1, 2011
November 19, 2013

Effective Date: November 19, 2013

CSET = Community Services, Employment and Training
 CDNC = Community Development and Neighborhood Conservation
 Health = Health Department
 Contingency = Contingency Fund

BOS - Supervisor, District 3

ENTITY NAME	PAYEE NAME	POSTING DATE	AMOUNT	FISCAL YEAR	TRANSACTION ID	TYPE	CAT1	FUND1	County Fund?	Date(s) of Allocation
Pima	AJO COMMUNITY HEALTH CENTER	3/27/2014	\$250.00	2014	AD140000000000061286-AD	Expense	Support & Care Services	General Fund		
Pima	AJO GIBSON VOLUNTEER FIRE DEPT	5/26/2014	\$1,000.00	2014	AD140000000000075153-AD	Expense	Support & Care Services	General Fund		
Pima	AMERICAN LEGION	4/5/2013	\$400.00	2013	AD130000000000080552-AD	Expense	Support & Care Services	General Fund		
Pima	ANIMAL WELFARE ALLIANCE SO AZ (AWASA)	1/17/2013	\$315.00	2013	AD130000000000061493-AD	Expense	Support & Care Services	General Fund	Health - \$55,000	6/14/2014
Pima	ARIVACA ACTION CENTER INCORPORATED	5/17/2013	\$750.00	2013	AD130000000000090522-AD	Expense	Support & Care Services	General Fund	CSET - \$44,280	7/1/2014
Pima	Arivaca Area Health Services Inc	10/24/2013	\$175.00	2014	AD140000000000027161-AD	Expense	Support & Care Services	General Fund		
Pima	CITIZENS FOR PICTURE ROCKS	5/21/2013	\$1,000.00	2013	AD130000000000091001-AD	Expense	Support & Care Services	General Fund		
Pima	CITIZENS FOR PICTURE ROCKS	6/2/2014	\$1,000.00	2014	AD140000000000076415-AD	Expense	Support & Care Services	General Fund		
Pima	COMPASS HEALTH CARE INC	5/17/2013	\$1,000.00	2013	AD130000000000090519-AD	Expense	Support & Care Services	General Fund	CSET - \$105,167	5/20/2014
Pima	EMILY MESHTER EARLY LEARNING CENTER	10/25/2012	\$150.00	2013	AD130000000000039652-AD	Expense	Support & Care Services	General Fund		
Pima	FLOWING WELLS GRAD NIGHT	4/18/2013	\$1,000.00	2013	AD130000000000083750-AD	Expense	Support & Care Services	General Fund		
Pima	FLOWING WELLS GRAD NIGHT	3/27/2014	\$1,000.00	2014	AD140000000000061318-AD	Expense	Support & Care Services	General Fund		
Pima	FLOWING WELLS NEIGHB ASSOC	11/1/2012	\$266.65	2013	AD130000000000041775-AD	Expense	Support & Care Services	General Fund		
Pima	FLOWING WELLS NEIGHB ASSOC	11/5/2012	\$370.00	2013	AD130000000000042273-AD	Expense	Support & Care Services	General Fund		
Pima	FLOWING WELLS NEIGHB ASSOC	3/6/2014	\$180.00	2014	AD140000000000056986-AD	Expense	Support & Care Services	General Fund		
Pima	FLOWING WELLS UNIFIED SCHOOL DISTRICT NO 8	8/27/2012	\$750.00	2013	AD130000000000017100-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	FLOWING WELLS UNIFIED SCHOOL DISTRICT NO 8	10/10/2012	\$300.00	2013	13000000000000000231-MD	Expense	Support & Care Services	General Fund	<>	<>
Pima	FLOWING WELLS UNIFIED SCHOOL DISTRICT NO 8	10/11/2012	\$150.00	2013	13000000000000000232-MD	Expense	Support & Care Services	General Fund	<>	<>
Pima	FLOWING WELLS UNIFIED SCHOOL DISTRICT NO 8	10/17/2012	-\$150.00	2013	13000000000000000232-MD	Expense	Support & Care Services	General Fund	<>	<>
Pima	FLOWING WELLS UNIFIED SCHOOL DISTRICT NO 8	9/16/2013	\$1,000.00	2014	AD140000000000018403-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	FLOWING WELLS UNIFIED SCHOOL DISTRICT NO 8	10/3/2013	\$1,000.00	2014	AD140000000000022678-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	FLOWING WELLS UNIFIED SCHOOL DISTRICT NO 8	10/10/2013	\$200.00	2014	AD140000000000023776-AD	Expense	Support & Care Services	General Fund	CDNC - \$12,150	12/17/2013
Pima	FRIENDS OF ROBLES RANCH	6/6/2013	\$1,000.00	2013	AD130000000000095182-AD	Expense	Support & Care Services	General Fund		
Pima	FRIENDS OF ROBLES RANCH	6/24/2013	\$2,000.00	2013	AD130000000000099884-AD	Expense	Support & Care Services	General Fund		
Pima	INTERNATIONAL SONORAN DESERT ALLIANCE	5/23/2013	\$1,000.00	2013	AD130000000000091494-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	INTERNATIONAL SONORAN DESERT ALLIANCE	6/17/2013	\$1,000.00	2013	AD130000000000097962-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	INTERNATIONAL SONORAN DESERT ALLIANCE	9/16/2013	\$1,000.00	2014	AD140000000000018402-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	INTERNATIONAL SONORAN DESERT ALLIANCE	6/26/2014	\$750.00	2014	AD140000000000081649-AD	Expense	Support & Care Services	General Fund	CSET - \$127,020	10/8/2013, 5/13/14, 7/1/14
Pima	LEND A HAND SENIOR ASSISTANCE INC	4/18/2013	\$250.00	2013	AD130000000000083753-AD	Expense	Support & Care Services	General Fund		
Pima	LIMBERLOST NEIGHBORHOOD ASSOCIATION	5/22/2014	\$500.00	2014	AD140000000000073630-AD	Expense	Support & Care Services	General Fund		
Pima	NORTHWEST FIREFIGHTERS CHARITIES	4/2/2013	\$400.00	2013	13000000000000000327-MD	Expense	Support & Care Services	General Fund	CDNC - \$15,000	4/8/2014
Pima	Physician for Social Responsibility, Arizona	8/15/2013	\$1,000.00	2014	AD140000000000010379-AD	Expense	Support & Care Services	General Fund		
Pima	PORTABLE PRACTICAL EDUCATIONAL (PPEP)	11/4/2013	\$500.00	2014	AD140000000000031115-AD	Expense	Support & Care Services	General Fund	CSET - \$1,308,447.65	2/4/14, 4/8/14, 5/13/14, 7/1/14, 8/5/14
Pima	SOUTHERN ARIZONA AIDS FOUNDATION	5/21/2013	\$1,000.00	2013	AD130000000000091000-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	SOUTHERN ARIZONA AIDS FOUNDATION	6/2/2014	\$1,000.00	2014	AD140000000000076413-AD	Expense	Support & Care Services	General Fund	Contingency - \$1,500	9/3/2013
Pima	SOUTHERN ARIZONA COMMUNITY SPORTS, INC.	5/9/2013	\$500.00	2013	AD130000000000088375-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON CHILDREN'S MUSEUM	8/12/2013	\$500.00	2014	AD14000000000009654-AD	Expense	Support & Care Services	General Fund		
Pima	WALD INC	5/9/2013	\$250.00	2013	AD130000000000088352-AD	Expense	Support & Care Services	General Fund		
Pima	WALD INC	4/28/2014	\$750.00	2014	AD140000000000069176-AD	Expense	Support & Care Services	General Fund		
TOTAL			\$25,506.65							

BOS - Supervisor, District 4

ENTITY NAME	PAYEE NAME	POSTING DATE	AMOUNT	FISCAL YEAR	TRANSACTION ID	TYPE	CAT1	FUND1	County Fund?	Date(s) of Allocation
Pima	TUFF SHED INC	6/19/2014	\$3,555.90	2014	AD140000000000079743-AD	Expense	Support & Care Services	General Fund		
TOTAL			\$3,555.90							

BOS - Supervisor, District 5

ENTITY NAME	PAYEE NAME	POSTING DATE	AMOUNT	FISCAL YEAR	TRANSACTION ID	TYPE	CAT1	FUND1	County Fund?	Date(s) of Allocation
Pima	American Diabetes Association	8/15/2013	\$500.00	2014	AD140000000000010364-AD	Expense	Support & Care Services	General Fund		
Pima	American Diabetes Association	6/9/2014	\$1,250.00	2014	AD1400000000000078138-AD	Expense	Support & Care Services	General Fund		
Pima	AMERICAN INDIAN ASSOCIATION OF	3/24/2014	\$500.00	2014	AD1400000000000060867-AD	Expense	Support & Care Services	General Fund	CSET - \$112,260	8/6/13, 7/1/14
Pima	AMERICAN LEGION YOEME POST 125	2/28/2013	\$250.00	2013	AD1300000000000071449-AD	Expense	Support & Care Services	General Fund		
Pima	AMERICAN LEGION YOEME POST 125	2/14/2014	\$500.00	2014	AD1400000000000051773-AD	Expense	Support & Care Services	General Fund		
Pima	ARIZONA ALLIANCE FOR RETIRED AMERICANS	7/20/2012	\$270.00	2013	AD1300000000000005019-AD	Expense	Support & Care Services	General Fund		
Pima	ARIZONA BOARDER RIGHTS FOUNDATION	10/25/2012	\$400.00	2013	AD1300000000000039651-AD	Expense	Support & Care Services	General Fund		
Pima	Arizona Media Arts Center	2/27/2014	\$1,250.00	2014	AD1400000000000054808-AD	Expense	Support & Care Services	General Fund		
Pima	Arizona Media Arts Center	3/24/2014	\$150.00	2014	AD1400000000000060879-AD	Expense	Support & Care Services	General Fund		
Pima	ARIZONA STATE UNIVERSITY	10/10/2013	\$1,000.00	2014	AD1400000000000023759-AD	Expense	Support & Care Services	General Fund		
Pima	CHICANOS POR LA CAUSA	8/23/2012	\$1,000.00	2013	AD1300000000000016454-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	CHICANOS POR LA CAUSA	11/23/2012	\$400.00	2013	AD1300000000000049896-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	CHICANOS POR LA CAUSA	12/13/2012	\$500.00	2013	AD1300000000000055151-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	CHICANOS POR LA CAUSA	5/13/2013	\$2,500.00	2013	AD1300000000000089809-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	CHICANOS POR LA CAUSA	11/14/2013	\$800.00	2014	AD1400000000000033647-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	CHICANOS POR LA CAUSA	12/5/2013	\$400.00	2014	AD1400000000000037748-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	CHICANOS POR LA CAUSA	4/10/2014	\$2,500.00	2014	AD1400000000000064454-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	CHICANOS POR LA CAUSA	6/26/2014	\$4,999.00	2014	AD1400000000000081633-AD	Expense	Support & Care Services	General Fund	CSET - \$136,360	8/6/13, 7/1/14
Pima	Communication Workers of America	3/3/2014	\$45.00	2014	AD1400000000000056529-AD	Expense	Support & Care Services	General Fund		
Pima	DANCING IN THE STREETS ARIZONA	9/27/2012	\$500.00	2013	AD1300000000000033042-AD	Expense	Support & Care Services	General Fund		
Pima	DANCING IN THE STREETS ARIZONA	11/1/2013	\$500.00	2014	AD1400000000000030654-AD	Expense	Support & Care Services	General Fund		
Pima	DANCING IN THE STREETS ARIZONA	6/2/2014	\$300.00	2014	AD1400000000000076417-AD	Expense	Support & Care Services	General Fund		
Pima	EXODUS COMMUNITY SERVICES INC	8/15/2013	\$98.70	2014	AD1400000000000010295-AD	Expense	Support & Care Services	General Fund		
Pima	EXODUS COMMUNITY SERVICES INC	5/19/2014	\$1,000.00	2014	AD1400000000000073089-AD	Expense	Support & Care Services	General Fund		
Pima	FIESTA GRANDE OF HOLLYWOOD INC	3/14/2013	\$1,000.00	2013	AD1300000000000074887-AD	Expense	Support & Care Services	General Fund		
Pima	FIESTA GRANDE OF HOLLYWOOD INC	4/10/2014	\$1,000.00	2014	AD1400000000000064387-AD	Expense	Support & Care Services	General Fund		
Pima	FLOWING WELLS UNIFIED SCHOOL DISTRICT NO 8	10/22/2012	\$1,000.00	2013	AD1300000000000039089-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	FLOWING WELLS UNIFIED SCHOOL DISTRICT NO 8	10/10/2013	\$500.00	2014	AD1400000000000023777-AD	Expense	Support & Care Services	General Fund	CDNC - \$12,150	12/17/2013
Pima	Fox Tucson Theatre Foundation	11/1/2013	\$1,000.00	2014	AD1400000000000030660-AD	Expense	Support & Care Services	General Fund		
Pima	FRIENDS OF ROBLES RANCH	5/9/2013	\$900.00	2013	AD1300000000000088326-AD	Expense	Support & Care Services	General Fund		
Pima	FRIENDS OF ROBLES RANCH	6/26/2014	\$1,000.00	2014	AD1400000000000081655-AD	Expense	Support & Care Services	General Fund		
Pima	FRIENDSHIP MISSIONARY BAPTIST	8/16/2012	\$100.00	2013	AD13000000000000014218-AD	Expense	Support & Care Services	General Fund		
Pima	GARDEN YOUTH DEVELOPMENT PROJECT INC	7/20/2012	\$1,000.00	2013	AD1300000000000005028-AD	Expense	Support & Care Services	General Fund		
Pima	HIGHER GROUND A RESOURCE CENTER	7/18/2013	\$250.00	2014	AD1400000000000003452-AD	Expense	Support & Care Services	General Fund		
Pima	HIGHER GROUND A RESOURCE CENTER	8/29/2013	\$300.00	2014	AD1400000000000013760-AD	Expense	Support & Care Services	General Fund		
Pima	HISPANIC WOMENS CORPORATION	8/10/2012	\$800.00	2013	AD1300000000000013171-AD	Expense	Support & Care Services	General Fund		
Pima	International Gay Bowling Organization (IGBO)	12/9/2013	\$100.00	2014	AD1400000000000038923-AD	Expense	Support & Care Services	General Fund		
Pima	JUNETEENTH FESTIVAL COMMITTEE	2/6/2014	\$200.00	2014	AD1400000000000050466-AD	Expense	Support & Care Services	General Fund	Contingency - \$6,000	6/3/2014
Pima	LEAGUE OF UNITED LATIN AMERICA (LULAC)	4/1/2013	\$750.00	2013	AD1300000000000079948-AD	Expense	Support & Care Services	General Fund	Contingency - \$12,500	2/18/2014
Pima	LITERACY CONNECTS	12/31/2012	\$500.00	2013	AD1300000000000058699-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	LITERACY CONNECTS	5/9/2013	\$150.00	2013	AD1300000000000088290-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	LITERACY CONNECTS	8/15/2013	\$1,000.00	2014	AD1400000000000010490-AD	Expense	Support & Care Services	General Fund	Contingency - \$37,500 CSET - \$148,000	10/8/13, 2/18/14, 8/5/14
Pima	LOS DESCENDIENTES DEL PRESIDIO	8/2/2012	\$750.00	2013	AD1300000000000009611-AD	Expense	Support & Care Services	General Fund		
Pima	LOS DESCENDIENTES DEL PRESIDIO	8/8/2013	\$750.00	2014	AD1400000000000009194-AD	Expense	Support & Care Services	General Fund		
Pima	LOS DESCENDIENTES DEL PRESIDIO	4/17/2014	\$1,500.00	2014	AD1400000000000066510-AD	Expense	Support & Care Services	General Fund		
Pima	LUZ SOCIAL SERVICES INC	11/1/2012	\$1,000.00	2013	AD13000000000000041772-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	LUZ SOCIAL SERVICES INC	5/9/2013	\$500.00	2013	AD1300000000000088305-AD	Expense	Support & Care Services	General Fund	<>	<>
Pima	LUZ SOCIAL SERVICES INC	11/12/2013	\$1,000.00	2014	AD1400000000000033195-AD	Expense	Support & Care Services	General Fund	Contingency - \$61,250	1/1/2013
Pima	Mariachi Nueva Generacion Inc	5/1/2014	\$500.00	2014	AD1400000000000069708-AD	Expense	Support & Care Services	General Fund		
Pima	MECHA Organization	5/5/2014	\$500.00	2014	AD1400000000000070162-AD	Expense	Support & Care Services	General Fund		
Pima	METROPOLITAN EDUCATION COMMISS	3/14/2013	\$750.00	2013	AD1300000000000074939-AD	Expense	Support & Care Services	General Fund		
Pima	METROPOLITAN EDUCATION COMMISS	4/7/2014	\$750.00	2014	AD1400000000000063880-AD	Expense	Support & Care Services	General Fund		
Pima	MUSEUM OF CONTEMPORARY ART	2/14/2013	\$1,000.00	2013	AD1300000000000068306-AD	Expense	Support & Care Services	General Fund		

BOS - Supervisor, District 5

ENTITY NAME	PAYEE NAME	POSTING DATE	AMOUNT	FISCAL YEAR	TRANSACTION ID	TYPE	CAT1	FUND1	County Fund?	Date(s) of Allocation
Pima	NATIVE SEEDS/SEARCH	10/4/2012	\$100.00	2013	AD1300000000000035129-AD	Expense	Support & Care Services	General Fund		
Pima	NEW SPIRIT LUTHERAN CHURCH	5/5/2014	\$1,000.00	2014	AD1400000000000070140-AD	Expense	Support & Care Services	General Fund		
Pima	PARTIES PLUS INC	11/1/2012	\$147.68	2013	AD1300000000000041770-AD	Expense	Support & Care Services	General Fund		
Pima	PARTIES PLUS INC	12/20/2012	\$42.67	2013	AD1300000000000056429-AD	Expense	Support & Care Services	General Fund		
Pima	PARTIES PLUS TUCSON LLC	11/25/2013	\$76.70	2014	AD1400000000000036458-AD	Expense	Support & Care Services	General Fund		
Pima	Physician for Social Responsibility, Arizona	4/15/2013	\$1,000.00	2013	AD1300000000000083195-AD	Expense	Support & Care Services	General Fund		
Pima	Pima Animal Care Center	8/5/2013	\$10.00	2014	AD140000000000008629-AD	Expense	Support & Care Services	General Fund		
Pima	Pima Area Labor Federation	5/1/2014	\$500.00	2014	AD1400000000000069714-AD	Expense	Support & Care Services	General Fund		
Pima	PLANNED PARENTHOOD ARIZONA INC	1/17/2013	\$900.00	2013	AD1300000000000061484-AD	Expense	Support & Care Services	General Fund		
Pima	PLANNED PARENTHOOD ARIZONA INC	2/27/2014	\$1,500.00	2014	AD1400000000000054757-AD	Expense	Support & Care Services	General Fund		
Pima	PUEBLO GARDENS NEIGHBORHOOD	1/17/2013	\$500.00	2013	AD1300000000000061459-AD	Expense	Support & Care Services	General Fund		
Pima	PUEBLO GARDENS NEIGHBORHOOD	12/12/2013	\$500.00	2014	AD1400000000000039345-AD	Expense	Support & Care Services	General Fund		
Pima	SANTA CRUZ VALLEY HERITAGE ALLIANCE INC	10/4/2012	\$120.00	2013	AD1300000000000035066-AD	Expense	Support & Care Services	General Fund		
Pima	SAVE THE SCENIC SANTA RITAS	9/27/2012	\$100.00	2013	AD1300000000000033041-AD	Expense	Support & Care Services	General Fund		
Pima	SKY ISLAND ALLIANCE	7/15/2013	\$250.00	2014	AD140000000000002753-AD	Expense	Support & Care Services	General Fund		
Pima	SOUTHERN ARIZONA AIDS FOUNDATION	9/2/2012	\$500.00	2013	AD1300000000000024771-AD	Expense	Support & Care Services	General Fund	Contingency - \$1,500	9/3/2013
Pima	ST FRANCIS IN THE FOOTHILLS UMC	2/14/2013	\$1,000.00	2013	AD1300000000000068304-AD	Expense	Support & Care Services	General Fund		
Pima	ST MARGARET MARY CHURCH	11/1/2012	\$300.00	2013	AD1300000000000041767-AD	Expense	Support & Care Services	General Fund		
Pima	SUNNYSIDE UNIFIED SCHL DIST 12	10/11/2012	\$45.00	2013	AD1300000000000036247-AD	Expense	Support & Care Services	General Fund		
Pima	THE HAVEN	2/27/2014	\$140.00	2014	AD1400000000000054739-AD	Expense	Support & Care Services	General Fund		
Pima	THE PRIMAVERA FOUNDATION INC (Primavera)	11/25/2013	\$500.00	2014	AD1400000000000036491-AD	Expense	Support & Care Services	General Fund	CDNC - \$360,371 CSET - \$171,120	8/6/13, 2/11/14, 3/4/14, 7/1/14
Pima	THE UNIVERSITY OF ARIZONA	9/27/2012	\$200.00	2013	AD1300000000000033021-AD	Expense	Support & Care Services	General Fund		
Pima	THE UNIVERSITY OF ARIZONA	2/10/2014	\$500.00	2014	AD1400000000000051007-AD	Expense	Support & Care Services	General Fund		
Pima	THE UNIVERSITY OF ARIZONA	5/26/2014	\$1,000.00	2014	AD1400000000000075162-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON ARTS BRIGADE	2/4/2013	\$500.00	2013	AD1300000000000066586-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON ARTS BRIGADE	1/9/2014	\$500.00	2014	AD1400000000000044413-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON CHAPTER NAACP	9/2/2012	\$600.00	2013	AD1300000000000024772-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON CHAPTER NAACP	8/12/2013	\$750.00	2014	AD1400000000000010005-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON CHAPTER NAACP	5/26/2014	\$750.00	2014	AD1400000000000075165-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON CLEAN & BEAUTIFUL INC	9/17/2012	\$40.00	2013	AD1300000000000031209-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON CLEAN & BEAUTIFUL INC	9/24/2012	\$40.00	2013	AD1300000000000032417-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON GLBT CHAMBER OF COMMERCE	7/20/2012	\$60.00	2013	AD130000000000005030-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON MEET YOURSELF	9/2/2012	\$150.00	2013	AD1300000000000024769-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON MEXICO SISTER CITIES	10/25/2012	\$1,000.00	2013	AD1300000000000039650-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON PIMA ARTS COUNCIL	5/2/2013	\$1,000.00	2013	AD1300000000000087121-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON PIMA ARTS COUNCIL	5/8/2014	\$1,000.00	2014	AD1400000000000070661-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON SOUTHERN ARIZONA BLACK CHAMBER	2/7/2013	\$80.00	2013	AD1300000000000067206-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON UNIFIED SCHOOL DISTRICT	4/25/2013	\$1,000.00	2013	AD1300000000000085007-AD	Expense	Support & Care Services	General Fund		
Pima	TUCSON UNIFIED SCHOOL DISTRICT	5/6/2013	\$500.00	2013	AD1300000000000087707-AD	Expense	Support & Care Services	General Fund		
Pima	WINGSPAN	8/15/2013	\$1,250.00	2014	AD1400000000000010307-AD	Expense	Support & Care Services	General Fund		
Pima	WINGSPAN	9/16/2013	\$200.00	2014	AD1400000000000018580-AD	Expense	Support & Care Services	General Fund		
Pima	YWCA OF TUCSON	4/28/2014	\$250.00	2014	AD1400000000000069162-AD	Expense	Support & Care Services	General Fund		
TOTAL			\$62,764.75							

A.R.S. - §35-301. Duties and liabilities of custodian of public monies; violations; classification

A public officer or other person, including justices of the peace and constables, charged with the receipt, safekeeping, transfer or disbursement of public money is guilty of a class 4 felony who:

1. Without authority of law, appropriates it, or any portion thereof, to his own use, or to the use of another.
2. Knowingly loans it, or any portion thereof.
3. Knowingly fails to keep it in his possession until disbursed or paid out by authority of law.
4. Without authority of law knowingly deposits it, or any portion thereof, in a bank, or with a banker or other person, except on special deposit for safekeeping.
5. Knowingly keeps a false account, or makes a false entry or erasure in an account of, or relating to it.
6. Alters, falsifies, conceals, destroys or obliterates such an account with an intent to defraud or deceive.
7. Knowingly refuses or omits to pay over, on demand, public monies in his hands, upon presentation of a draft, order or warrant drawn upon such monies by competent authority.
8. Knowingly omits or refuses to transfer the money when a transfer is required by law.
9. Knowingly transfers the money when not authorized or directed by law.
10. Knowingly omits or refuses to pay over to an officer or person authorized by law to receive it, any money received by him when a duty is imposed by law to pay over the money.

**Constitution of the State of Arizona, A.R.S. Constitution, Article IX,
§7. Gift or loan of credit; subsidies; stock ownership; joint ownership**

Section 7

Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state.

GOLDWATER

I N S T I T U T E

Where freedom wins.

October 10, 2014

Sharon Bronson, Chair, Supervisor District 3
Pima County Board of Supervisors
130 W. Congress Street, 11th Floor
Tucson, AZ 85701
Fax: (520) 884-1152

SENT VIA US MAIL AND FAX

Re: Pima County Board of Supervisors' gifts to nonprofit groups

Dear Chairperson Bronson:

It has come to the Goldwater Institute's attention that members of the Pima County Board of Supervisors have gifted portions of their office budgets to nonprofit groups. For instance, Tim Steller recently reported in the *Arizona Daily Star* that Supervisor Richard Elías unilaterally gifted more than \$13,299 of taxpayer funds over the last two years to a single nonprofit group. It is our understanding that this is not an isolated incident but a common practice among many members of the Board.

If our understanding is correct, this practice very clearly violates the Arizona Constitution. Specifically, the Arizona Constitution mandates: "Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or *make any donation* or grant, by subsidy or otherwise, to any individual, association, or corporation. . . ." ARIZ. CONST. ART. IX, § 7 (emphasis added). The Arizona Supreme Court has held that this provision prohibits governments from making public expenditures without receiving adequate consideration in return. Moreover, the Supreme Court has held that "indirect benefits" are not consideration under the Gift Clause. *See Turken v. Gordon*, 223 Ariz. 342, 349 (2010). Pima County does not receive adequate consideration, indeed it apparently receives no consideration, when supervisors donate public funds to the charities of their choice. As a result, these office budget gifts are unconstitutional.

Under our state constitution, Arizonans are guaranteed that local special interests will not receive preferential treatment under the law. Taxpayers likewise are guaranteed that public money will be spent only for public purposes and that adequate consideration will be received for the expenditure of any public funds. Supervisors unilaterally gifting taxpayer funds from their individual office budgets contravenes these basic constitutional principles.

Moreover, please note that under certain circumstances public officials who make unlawful expenditures of public funds may be civilly liable for those expenditures. *See* ARIZ. REV. STAT. §§ 35-154, 35-196 (2012).

The Goldwater Institute respectfully requests that the Pima County Board of Supervisors adopt a policy ending these illegal gifts. If we do not receive confirmation within the next thirty days that the Board intends to adopt such a policy, we will avail ourselves of other legal remedies available to us. We have concurrently submitted a public records request pursuant to ARIZ. REV. STAT. §§ 39-121 to 39-128, so that we will be able to assess the full extent of the constitutional violations committed thus far.

We appreciate your thoughtful consideration of these matters and look forward to hearing from you.

Sincerely,



Jared Blanchard

Attorney

Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute


cc. Barbara LaWall (Pima County Attorney)
Ally Miller (Supervisor District 1)
Ramón Valadez (Supervisor District 2)
Ray Carroll (Supervisor District 4)
Richard Elías (Supervisor District 5)
Robin Brigode (Clerk of the Board)
Arizona Attorney General's Office

Arizona Revised Statute 35-154

<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/35/00154.htm&Title=35&DocType=ARS>

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35-154. Unauthorized obligations; effect; liability

A. No person shall incur, order or vote for the incurrence of any obligation against the state or for any expenditure not authorized by an appropriation and an allotment. Any obligation incurred in contravention of this chapter shall not be binding upon the state and shall be null and void and incapable of ratification by any executive authority to give effect thereto against the state.


B. Every person incurring, or ordering or voting for the incurrence of such obligations, and his bondsmen, shall be jointly and severally liable therefor. Every payment made in violation of the provisions of this chapter shall be deemed illegal, and every official authorizing or approving such payment, or taking part therein, and every person receiving such payment, or any part thereof, shall be jointly and severally liable to the state for the full amount so paid or received.

Arizona Revised Statute 35-196

<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/35/00196.htm&Title=35&DocType=ARS>

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35-196. Illegal withholding or expenditure of state monies; civil liability

Any state officer or employee who illegally withholds, expends or otherwise converts any state money to an unauthorized purpose shall be liable, either individually or on his bond, for the amount of such money, plus a penal sum of twenty per cent thereof, and an action may be instituted by the director of the department of administration or the attorney general immediately upon the discovery thereof.