

REFERENCE TITLE: state procurement code; construction

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

# HB 2112

Introduced by  
Representative Kavanagh

AN ACT

AMENDING SECTIONS 34-603 AND 41-2578, ARIZONA REVISED STATUTES; RELATING TO  
THE ARIZONA PROCUREMENT CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 34-603, Arizona Revised Statutes, is amended to  
3 read:  
4 34-603. Procurement of professional services and  
5 construction-manager-at-risk, design-build and  
6 job-order-contracting construction services:  
7 definition  
8 A. Except for services that are under a single contract and that an  
9 agent procures pursuant to section 34-103 or 34-606, an agent shall procure a  
10 single contract for the following services pursuant to this section:  
11 1. Architect services.  
12 2. Construction-manager-at-risk construction services.  
13 3. Design-build construction services.  
14 4. Engineer services.  
15 5. Job-order-contracting construction services.  
16 6. Landscape architect services.  
17 7. Assayer services.  
18 8. Geologist services.  
19 9. Land surveying services.  
20 B. An agent shall provide notice of each procurement of professional  
21 services or construction services specified in this section and shall award  
22 the single contract on the basis of demonstrated competence and  
23 qualifications for the type of professional services or construction services  
24 pursuant to the procedures prescribed in this section.  
25 C. In a procurement of a single contract for professional services or  
26 construction services pursuant to this section:  
27 1. The following requirements apply:  
28 (a) The agent and the selection committee shall not request or  
29 consider fees, price, man-hours or any other cost information at any point in  
30 the selection process under this subsection or under subsection D of this  
31 section, including the selection of persons or firms to be interviewed, the  
32 selection of persons or firms to be on the final list, in determining the  
33 order of preference of persons or firms on the final list or for any other  
34 purpose in the selection process.  
35 (b) In determining the persons or firms to participate in any  
36 interviews and in determining the persons and firms to be on the final list  
37 and their order on the final list, the selection committee shall use and  
38 shall consider only the criteria and weighting of criteria specified by the  
39 agent for that purpose as provided in this subsection. No other factors or  
40 criteria may be used in the evaluation, determinations and other actions.  
41 (c) An agent is limited to one contract in each procurement under this  
42 section. Alternatively:  
43 (i) For construction-manager-at-risk construction services, an agent  
44 may elect separate contracts for preconstruction services during the design

1 phase, for construction during the construction phase and for any other  
2 construction services.

3 (ii) For design-build construction services, an agent may elect  
4 separate contracts for preconstruction services and design services during  
5 the design phase, for construction and design services during the  
6 construction phase and for any other construction services.

7 (iii) For professional services, an agent may enter into multiple  
8 contracts for different phases of a single project.

9 (d) All construction-manager-at-risk construction services or  
10 design-build construction services included in a procurement under this  
11 section shall be limited to construction services to be performed at a single  
12 location, a common location or, if the construction services are all for a  
13 similar purpose, multiple locations. For construction-manager-at-risk  
14 construction services and design-build construction services to be performed  
15 at multiple locations:

16 (i) At the time the request for qualifications is issued, the agent  
17 must intend to commence all construction at each location within thirty  
18 months after execution of the first contract for preconstruction services or  
19 other construction services at any of the locations.

20 (ii) The request for qualifications must include the information  
21 described in paragraph 2, subdivision (g) of this subsection.

22 (e) If the agent enters into the first contract for preconstruction  
23 services, construction services or professional services as the result of the  
24 procurement, the procurement under this section ends. After execution of  
25 that first contract the agent may not use the procurement or the existing  
26 final list in the procurement as the basis for entering into a contract with  
27 any other person or firm that participated in the procurement.

28 (f) Notwithstanding any other provision of this section specifying the  
29 number of persons or firms to be interviewed, the number of persons or firms  
30 to be on a final list or any other numerical specification in this section:

31 (i) If a smaller number of persons or firms ~~respond~~ RESPONDS to the  
32 request for qualifications or if one or more persons or firms drop out of the  
33 procurement so that there is a smaller number of persons or firms  
34 participating in the procurement, the agent may elect to proceed with the  
35 procurement with the participating persons or firms if there are at least two  
36 participating responsive and responsible persons or firms. Alternatively,  
37 the agent may elect to terminate the procurement.

38 (ii) As to a request for qualifications for professional services or  
39 construction services to be negotiated pursuant to subsection E of this  
40 section only, if only one responsive and responsible person or firm responds  
41 to the request for qualifications or, if one or more persons or firms drop  
42 out of the procurement so that only one responsive and responsible person or  
43 firm remains in the procurement, the agent may elect to proceed with the  
44 procurement with only one person or firm if the agent determines in writing  
45 that the fee negotiated pursuant to subsection E of this section is fair and

1 reasonable and that either other prospective persons or firms had reasonable  
2 opportunity to respond or there is not adequate time for a resolicitation.

3 (iii) If a person or firm on the final list withdraws or is removed  
4 from the procurement and the selection committee determines that it is in the  
5 best interest of the agent, the selection committee may replace that person  
6 or firm on the final list with another person or firm that submitted  
7 qualifications in the procurement and that is selected by the selection  
8 committee as the next most qualified.

9 2. An agent shall issue a request for qualifications for each  
10 procurement and publish notice of the request for qualifications. This  
11 notice shall be published by advertising in a newspaper of general  
12 circulation in the county in which the agent is located for two consecutive  
13 publications if it is a weekly newspaper or for two publications that are at  
14 least six but no more than ten days apart if it is a daily newspaper. The  
15 request for qualifications shall:

16 (a) State that one contract may or will be awarded, describe the  
17 services to be performed under the contract and state that one person or firm  
18 may or will be awarded the contract.

19 (b) In a procurement of a contract to be negotiated under subsection E  
20 of this section, state that there will be a single final list of at least  
21 three and not more than five persons or firms. In a procurement in which the  
22 contract will be awarded under subsection F of this section, **THE REQUEST FOR**  
23 **QUALIFICATIONS SHALL** state that there will be a single final list and that  
24 the number of persons or firms on the final list will be three.

25 (c) As prescribed below, state the selection criteria and relative  
26 weight of the selection criteria to be used by the selection committee,  
27 except that for construction services one of the criteria shall be the  
28 person's or firm's subcontractor selection plan or procedures to implement  
29 the agent's subcontractor selection plan. All selection criteria under this  
30 subsection shall be factors that demonstrate competence and qualifications  
31 for the type of professional services or construction services included in  
32 the procurement. If:

33 (i) Interviews will be held, the request for qualifications shall  
34 state the selection criteria and relative weight of the selection criteria to  
35 be used in selecting the persons or firms to be interviewed and the request  
36 for qualifications may state the selection criteria and relative weight of  
37 the selection criteria to be used in selecting the persons or firms on the  
38 final list and in determining their order on the final list. The final list  
39 selection criteria and relative weights may be different than the selection  
40 criteria and relative weights used to determine the persons or firms to be  
41 interviewed. The request for qualifications shall also state whether the  
42 agent will select the persons or firms on the final list and their order on  
43 the final list solely through the results of the interview process or through  
44 the combined results of both the interview process and the evaluation of

1 statements of qualifications and performance data submitted in response to  
2 the agent's request for qualifications.

3 (ii) Interviews will not be held, the request for qualifications shall  
4 state the selection criteria and relative weight of the selection criteria to  
5 be used in selecting the persons or firms on the final list and in  
6 determining their order on the final list.

7 (d) If the agent will hold interviews as part of the selection  
8 process, state that interviews will be held and that the interviews will be  
9 with at least three but not more than five persons or firms.

10 (e) For procurements of construction services, include either:

11 (i) A requirement that each person or firm submit a proposed  
12 subcontractor selection plan and a requirement that the proposed  
13 subcontractor selection plan must select subcontractors based on  
14 qualifications alone or on a combination of qualifications and price and  
15 shall not select subcontractors based on price alone.

16 (ii) A subcontractor selection plan adopted by the agent that applies  
17 to the person or firm that is selected to perform the construction services  
18 and that requires subcontractors to be selected based on qualifications alone  
19 or on a combination of qualifications and price and not based on price alone  
20 and a requirement that each person or firm must submit a description of the  
21 procedures it proposes to use to implement the agent's subcontractor  
22 selection plan.

23 (f) Include a description of the publicly available location of the  
24 agent's protest policy and procedures or, if the agent does not have a  
25 protest policy and procedures, a statement that the protest policy and  
26 procedures referred to in subsection J of this section apply to any protests  
27 in connection with the procurement.

28 (g) In a procurement of construction-manager-at-risk construction  
29 services or design-build construction services to be performed at multiple  
30 locations, include:

31 (i) A brief description of the construction services to be performed  
32 at each location.

33 (ii) The estimated budget for the construction services to be  
34 performed at each location.

35 (iii) A schedule for the construction services to be performed at each  
36 location that shows the agent's intent to commence all construction at each  
37 location within thirty months after execution of the first contract for  
38 preconstruction services or other construction services at any of the  
39 locations.

40 3. An agent shall initiate an appropriately qualified selection  
41 committee for each request for qualifications. The agent shall ensure that  
42 the selection committee members are competent to serve on the selection  
43 committee. Each selection committee must include one employee of the agent  
44 or an agent representative who is appointed by the agent. If the agent is  
45 procuring professional services, the agent shall determine the number and

1 qualifications of the selection committee members. A selection committee for  
2 the procurement of construction services shall not have more than seven  
3 members, except that, if the contract involves the agent and additional  
4 governmental or private participants, the number of members of the selection  
5 committee shall be increased by one for each additional participant, except  
6 that the maximum number of members of the selection committee is nine. The  
7 selection committee for construction services shall include at least one  
8 person who is a senior management employee of a licensed contractor and one  
9 person who is an architect or an engineer who is registered pursuant to  
10 section 32-121. These members may be employees of the agent or outside  
11 consultants. Outside contractors, architects and engineers serving on a  
12 selection committee shall not receive compensation from the agent for  
13 performing this service, but the agent may elect to reimburse outside  
14 contractors, architects and engineers for travel, lodging and other expenses  
15 incurred in connection with service on a selection committee. A person who  
16 is a member of a selection committee shall not be a contractor under a  
17 contract awarded under the procurement or provide any professional services,  
18 construction, construction services, materials or other services under the  
19 contract. The selection committee and the agent shall do the following:

20 (a) If interviews are specified in the request for qualifications:

21 (i) The selection committee shall determine the persons or firms to be  
22 interviewed by evaluating the statements of qualifications and performance  
23 data that are submitted in response to the agent's request for qualifications  
24 based only on the selection criteria and relative weight of the selection  
25 criteria stated in the request for qualifications to be used to determine the  
26 persons or firms to be interviewed.

27 (ii) If the selection criteria and relative weight of the selection  
28 criteria to be used by the selection committee to select the persons or firms  
29 on the final list and to determine their order on the final list are not  
30 included in the request for qualifications, before the interviews are held  
31 the agent shall distribute to the persons or firms to be interviewed the  
32 selection criteria and relative weight of the selection criteria to be used  
33 to select the persons or firms on the final list and to determine their order  
34 on the final list. These selection criteria and relative weight may be  
35 different than the selection criteria and relative weight used to determine  
36 the persons or firms to be interviewed.

37 (iii) The selection committee shall conduct interviews with the number  
38 of persons or firms to be interviewed as stated in the request for  
39 qualifications regarding the professional services or construction services  
40 and the relative methods of approach for furnishing the required professional  
41 services or construction services.

42 (b) Based only on the selection criteria and relative weight of the  
43 selection criteria specified as provided in this subsection for selection of  
44 the persons or firms on the final list and their order on the final list, the  
45 selection committee shall select the persons or firms for the final list and,

1 in the case of a final list for a contract that will be negotiated under  
2 subsection E of this section, rank the persons or firms on the final list in  
3 order of preference.

4 (c) If the contract will be negotiated under subsection E of this  
5 section, before or at the same time as the agent notifies the highest ranking  
6 person or firm on the final list that it is the highest ranking person or  
7 firm, the agent shall send actual notice to each of the following that it is  
8 not the highest person or firm on the final list or that another person or  
9 firm is the highest ranking person or firm on the final list:

10 (i) If interviews were held, the other persons and firms interviewed.

11 (ii) If interviews were not held, the other persons and firms that  
12 made submittals.

13 (d) If the contract will be awarded under subsection F of this  
14 section, before or at the same time as the agent notifies the persons or  
15 firms on the final list that they are on the final list, the agent shall send  
16 actual notice to each of the following persons or firms that they are not on  
17 the final list or that other persons or firms are on the final list:

18 (i) If interviews were held, the other persons or firms interviewed.

19 (ii) If interviews were not held, the other persons or firms that made  
20 submittals.

21 D. An agent shall award the single contract under the procurement as  
22 provided in subsection E or F of this section.

23 E. The agent shall conduct negotiations with persons or firms on the  
24 final list as follows:

25 1. The procurement is for a single contract for construction services  
26 or professional services, and there is one final list.

27 2. The negotiations shall include consideration of compensation and  
28 other contract terms that the agent determines to be fair and reasonable to  
29 the agent. In making this decision, the agent shall take into account the  
30 estimated value, the scope, the complexity and the nature of the professional  
31 services or construction services to be rendered.

32 3. The agent shall enter into negotiations **SIMULTANEOUSLY** with the  
33 **THREE** highest qualified ~~person or firm~~ **PERSONS OR FIRMS** on the final list.

34 4. If the agent is not able to negotiate a satisfactory contract with  
35 **ONE OF** the **THREE** highest qualified ~~person or firm~~ **PERSONS OR FIRMS** on the  
36 final list, at compensation and on other contract terms the agent determines  
37 to be fair and reasonable, the agent shall formally ~~terminate~~ **SUSPEND**  
38 negotiations with ~~that person or firm~~ **THOSE PERSONS OR FIRMS**. The agent  
39 shall then undertake negotiations with the next **REMAINING** most qualified  
40 ~~person or firm~~ **PERSONS OR FIRMS** on the final list ~~in sequence~~ **SIMULTANEOUSLY**  
41 until an agreement is reached or a determination is made to reject all  
42 persons or firms on the final list.

43 5. If in a procurement under this section the agent ~~terminates~~  
44 **SUSPENDS** negotiations with a person or firm on the final list and commences  
45 negotiations with another person or firm on the final list, the agent ~~shall~~

1 ~~not~~ in that procurement MAY recommence negotiations or enter into a contract  
2 for the construction services or professional services covered by the final  
3 list with any person or firm on the final list ~~with whom the agent has~~  
4 ~~terminated negotiations.~~

5 F. As an alternative to subsection E of this section, an agent may  
6 award a single contract for design-build construction services or  
7 job-order-contracting construction services as follows:

8 1. The agent shall use the selection committee appointed for the  
9 request for qualifications pursuant to subsection C of this section.

10 2. The agent shall issue a request for proposals to the persons or  
11 firms on the final list developed pursuant to subsection C of this section.

12 3. The request for proposals shall include:

13 (a) The agent's project schedule and project final budget for design  
14 and construction or life cycle budget for a procurement that includes  
15 maintenance services or operations services.

16 (b) A statement that the contract will be awarded to the offeror whose  
17 proposal receives the highest number of points under a scoring method.

18 (c) A description of the scoring method, including a list of the  
19 factors in the scoring method and the number of points allocated to each  
20 factor. The factors in the scoring method may include:

21 (i) For design-build construction services only, demonstrated  
22 compliance with the design requirements.

23 (ii) Offeror qualifications.

24 (iii) Offeror financial capacity.

25 (iv) Compliance with the agent's project schedule.

26 (v) For design-build construction services only, if the request for  
27 proposals specifies that the agent will spend its project budget and not more  
28 than its project budget and is seeking the best proposal for the project  
29 budget, compliance of the offeror's price or life cycle price for  
30 procurements that include maintenance services, operations services or  
31 finance services with the agent's budget as prescribed in the request for  
32 proposals.

33 (vi) For design-build construction services if the request for  
34 proposals does not contain the specifications prescribed in item (v) OF THIS  
35 SUBDIVISION and for job-order-contracting construction services, the price or  
36 life cycle price for procurements that include maintenance services,  
37 operations services or finance services.

38 (vii) An offeror quality management plan.

39 (viii) Other evaluation factors that demonstrate competence and  
40 qualifications for the type of construction services in the request for  
41 proposals as determined by the agent, if any.

42 (d) For design-build construction services only, the design  
43 requirements.

44 (e) A requirement that each offeror submit separately a technical  
45 proposal and a price proposal and that the offeror's entire proposal be

1 responsive to the requirements in the request for proposals. For  
2 design-build construction services, the price in the price proposal shall be  
3 a fixed price or a guaranteed maximum price.

4 (f) A statement that in applying the scoring method the selection  
5 committee will separately evaluate the technical proposal and the price  
6 proposal and will evaluate and score the technical proposal before opening  
7 the price proposal.

8 (g) If the agent conducts discussions pursuant to paragraph 5 of this  
9 subsection, a statement that discussions will be held and a requirement that  
10 each offeror submit a preliminary technical proposal before the discussions  
11 are held.

12 4. If the agent determines to conduct discussions pursuant to  
13 paragraph 5 of this subsection, each offeror shall submit a preliminary  
14 technical proposal to the agent before those discussions are held.

15 5. If determined by the agent and included by the agent in the request  
16 for proposals, the selection committee shall conduct discussions with all  
17 offerors that submit preliminary technical proposals. Discussions shall be  
18 for the purpose of clarification to ensure full understanding of, and  
19 responsiveness to, the solicitation requirements. Offerors shall be accorded  
20 fair treatment with respect to any opportunity for discussion and for  
21 clarification by the owner. Revision of preliminary technical proposals  
22 shall be permitted after submission of preliminary technical proposals and  
23 before award for the purpose of obtaining best and final proposals. In  
24 conducting any discussions, information derived from proposals submitted by  
25 competing offerors shall not be disclosed to other competing offerors.

26 6. After completion of any discussions pursuant to paragraph 5 of this  
27 subsection or if no discussions are held, each offeror shall submit  
28 separately the offeror's final technical proposal and its price proposal.

29 7. Before opening any price proposal, the selection committee shall  
30 open the final technical proposals, evaluate the final technical proposals  
31 and score the final technical proposals using the scoring method in the  
32 request for proposals. No other factors or criteria may be used in the  
33 evaluation and scoring.

34 8. After completion of the evaluation and scoring of all final  
35 technical proposals, the selection committee shall open the price proposals,  
36 evaluate the price proposals, score the price proposals and complete the  
37 scoring of the entire proposals using the scoring method in the request for  
38 proposals. No other factors or criteria may be used in the evaluation and  
39 scoring.

40 9. The agent shall award the contract or contracts to the responsive  
41 and responsible offeror whose proposal receives the highest score under the  
42 method of scoring in the request for proposals. No other factors or criteria  
43 may be used in the evaluation. Before or at the same time as the agent  
44 notifies the winning offeror that it has won, the agent shall send actual

1 notice to each other offeror either that the offeror has not won or that  
2 another offeror has won.

3 10. The contract or contracts file shall contain the basis on which the  
4 award is made, including at a minimum the information and documents required  
5 under subsection G of this section.

6 11. For design-build construction services only, the agent shall award  
7 a stipulated fee equal to a percentage, as prescribed in the request for  
8 proposals, of the agent's project final budget for design and construction,  
9 as prescribed in the request for proposals, but not less than two-tenths of  
10 one per cent of the project final budget for design and construction to each  
11 final list offeror who provides a responsive, but unsuccessful, proposal. If  
12 the agent does not award a contract, all responsive final list offerors shall  
13 receive the stipulated fee based on the owner's project final budget for  
14 design and construction as included in the request for proposals. The agent  
15 shall pay the stipulated fee to each offeror within ninety days after the  
16 award of the initial contract or the decision not to award a contract. In  
17 consideration for paying the stipulated fee, the agent may use any ideas or  
18 information contained in the proposals in connection with any contract  
19 awarded for the project, or in connection with a subsequent procurement,  
20 without any obligation to pay any additional compensation to the offerors.  
21 Notwithstanding the other provisions of this paragraph, an offeror may elect  
22 to waive the stipulated fee. If an offeror elects to waive the stipulated  
23 fee, the agent may not use ideas and information contained in the offeror's  
24 proposal, except that this restriction does not prevent the agent from using  
25 any idea or information if the idea or information is also included in a  
26 proposal of an offeror that accepts the stipulated fee.

27 G. At a minimum, the agent shall retain the following for each  
28 procurement under this section:

29 1. For each request for qualifications procurement process under  
30 subsection C of this section:

31 (a) If interviews were not held:

32 (i) The submittal of the person or firm listed first on the final list  
33 and, if different, the submittal of the person or firm with which the agent  
34 enters into a contract.

35 (ii) The final list.

36 (iii) A list of the selection criteria and relative weight of  
37 selection criteria used to select the persons or firms for the final list and  
38 to determine their order on the final list.

39 (iv) A list that contains the name of each person or firm that  
40 submitted qualifications and that shows the person's or firm's final overall  
41 rank or score.

42 (v) A document or documents that show the final score or rank on each  
43 selection ~~criteria~~ CRITERION of each person or firm that submitted  
44 qualifications and that support the final overall rankings and scores of the  
45 persons or firms that submitted qualifications. At the election of the

1 agent, this documentation may be in the form of a consolidated scoring sheet  
2 for the entire selection committee, in the form of individual scoring sheets  
3 for individual selection committee members or **IN** any other form as determined  
4 by the agent.

5 (b) If interviews were held:

6 (i) All submittals of the person or firm listed first on the final  
7 list and, if different, all submittals of the person or firm with which the  
8 agent enters into a contract.

9 (ii) The final list.

10 (iii) A list of the selection criteria and relative weight of  
11 selection criteria used to select the persons or firms for the final list and  
12 to determine their order on the final list.

13 (iv) A list that contains the name of each person or firm that was  
14 interviewed and that shows the person's or firm's final overall rank or  
15 score.

16 (v) A document or documents that show the final score or rank on each  
17 selection ~~criteria~~ **CRITERION** of each person or firm that was interviewed and  
18 that support the final overall rankings and scores of the persons or firms  
19 that were interviewed. At the election of the agent, this documentation may  
20 be in the form of a consolidated scoring sheet for the entire selection  
21 committee, in the form of individual scoring sheets for individual selection  
22 committee members or **IN** any other form as determined by the agent.

23 (vi) A list of the selection criteria and relative weight of the  
24 selection criteria used to select the persons or firms for the short list to  
25 be interviewed.

26 (vii) A list that contains the name of each person or firm that  
27 submitted qualifications and that shows the person's or firm's final overall  
28 rank or score in the selection of the persons or firms to be on the short  
29 list to be interviewed.

30 (viii) A document or documents that show the final score or rank on  
31 each selection ~~criteria~~ **CRITERION** of each person or firm that submitted  
32 qualifications and that support the final overall rankings and scores of the  
33 persons or firms that submitted qualifications in the selection of the  
34 persons or firms to be on the short list to be interviewed. At the election  
35 of the agent, this documentation may be in the form of a consolidated scoring  
36 sheet for the entire selection committee, in the form of individual scoring  
37 sheets for the individual selection committee members or **IN** any other form as  
38 determined by the agent.

39 2. For each request for proposals procurement process under subsection  
40 F of this section:

41 (a) The entire proposal submitted by the person or firm that received  
42 the highest score in the scoring method in the request for proposals and, if  
43 different, the entire proposal submitted by the person or firm with which the  
44 agent enters into a contract.

1 (b) The description of the scoring method, the list of factors in the  
2 scoring method and the number of points allocated to each factor, all as  
3 included in the request for proposals.

4 (c) A list that contains the name of each offeror that submitted a  
5 proposal and that shows the offeror's final overall score.

6 (d) A document or documents that show the final score on each factor  
7 in the scoring method in the request for proposals of each offeror that  
8 submitted a proposal and that support the final overall scores of the  
9 offerors that submitted proposals. At the election of the agent, this  
10 documentation may be in the form of a consolidated scoring sheet for the  
11 entire selection committee, in the form of individual scoring sheets for  
12 individual selection committee members or **IN** any other form as determined by  
13 the agent.

14 H. Information relating to each procurement under this section shall  
15 be made available to the public as follows:

16 1. Notwithstanding title 39, chapter 1, article 2, until the agent  
17 awards a contract or terminates the procurement, only the name of each person  
18 or firm on the final list developed pursuant to subsection C of this section  
19 may be made available to the public. All other information received by the  
20 agent in response to the request for qualifications pursuant to subsection C  
21 of this section or contained in proposals submitted pursuant to subsection F  
22 of this section shall be confidential in order to avoid disclosure of the  
23 contents that may be prejudicial to competing submitters and offerors during  
24 the selection process.

25 2. After the agent awards the contract or terminates the procurement,  
26 the agent shall make available to the public pursuant to title 39, chapter 1,  
27 article 2 at a minimum all of the items that the agent is required to retain  
28 under subsection G of this section, except the proposals submitted in  
29 response to a request for proposals under subsection F of this section and  
30 the document or documents prescribed in subsection G, paragraph 1,  
31 subdivision (a), item (v) and subdivision (b), items (v) and (viii) and  
32 paragraph 2, subdivision (d) of this section.

33 3. The proposals submitted under subsection F of this section shall  
34 not be made available to the public until after the agent has entered into a  
35 contract or terminated the procurement. At a minimum the proposals submitted  
36 under subsection F of this section that the agent is required to retain under  
37 subsection G of this section shall be made available to the public after the  
38 agent has entered into a contract or terminated the procurement.

39 4. To the extent that the offeror designates and the agent concurs,  
40 trade secrets and other proprietary data contained in a proposal remain  
41 confidential.

42 5. The document or documents prescribed in subsection G, paragraph 1,  
43 subdivision (a), item (v) and subdivision (b), items (v) and (viii) and  
44 paragraph 2, subdivision (d) of this section are available to the extent  
45 provided in title 39, chapter 1, article 2.

1 I. An agent may cancel a request for qualifications or a request for  
2 proposals, reject in whole or in part any or all submittals or proposals, or  
3 determine not to enter into a contract as specified in the solicitation if  
4 the agent determines in the agent's absolute and sole discretion that the  
5 action is in the best interest of the agent. The agent shall make the  
6 reasons for cancellation, rejection or determination not to enter into a  
7 contract part of the contract file.

8 J. If the agent does not have a procurement protest policy and  
9 procedures that have been formally adopted and published by the agent, for  
10 protests relating to procurements under this section the agent shall follow  
11 the procurement protest policy and procedures of the department of  
12 administration. The agent shall process all protests relating to  
13 procurements under this section.

14 K. For the purposes of this section, "professional services" includes  
15 architect services, engineer services, landscape architect services, assayer  
16 services, geologist services and land surveying services and any combination  
17 of those services.

18 Sec. 2. Section 41-2578, Arizona Revised Statutes, is amended to read:  
19 41-2578. Procurement of specified professional and construction  
20 services; definition

21 A. Except as authorized by sections 41-2535, 41-2536, 41-2537 and  
22 41-2581, a single contract for architect services, assayer services,  
23 construction-manager-at-risk construction services, design-build construction  
24 services, engineer services, job-order-contracting construction services,  
25 geologist services, landscape architect services and land surveying services  
26 shall be procured as provided in this section.

27 B. This state shall provide notice, in accordance with rules, of each  
28 procurement of a single contract for professional services or construction  
29 services specified in this section and shall award the single contract on the  
30 basis of demonstrated competence and qualifications for the type of  
31 professional services or construction services pursuant to procedures  
32 prescribed in this section.

33 C. In the procurement of a single contract for professional services  
34 or construction services pursuant to this section:

35 1. The following requirements apply:

36 (a) The purchasing agency and the selection committee shall not  
37 request or consider fees, price, man-hours or any other cost information at  
38 any point in the selection process under this subsection or under subsection  
39 D of this section, including the selection of persons or firms to be  
40 interviewed, the selection of persons or firms to be on the final list, in  
41 determining the order of preference of persons or firms on the final list or  
42 for any other purpose in the selection process.

43 (b) In determining the persons or firms to participate in any  
44 interviews and in determining the persons and firms to be on the final list  
45 and their order on the final list, the selection committee shall use and

1 shall consider only the criteria and weighting of criteria specified by the  
2 purchasing agency for that purpose as provided in this subsection. No other  
3 factors or criteria may be used in the evaluation, determinations and other  
4 actions.

5 (c) A purchasing agency is limited to one contract in each procurement  
6 under this section. Alternatively:

7 (i) For construction-manager-at-risk construction services, a  
8 purchasing agency may elect separate contracts for preconstruction services  
9 during the design phase, for construction during the construction phase and  
10 for any other construction services.

11 (ii) For design-build construction services, a purchasing agency may  
12 elect separate contracts for preconstruction services and design services  
13 during the design phase, for construction and design services during the  
14 construction phase and for any other construction services.

15 (iii) For professional services, a purchasing agency may enter into  
16 multiple contracts for different phases of a single project.

17 (d) All construction-manager-at-risk construction services or  
18 design-build construction services included in a procurement under this  
19 section shall be limited to construction services to be performed at a single  
20 location, a common location or, if the construction services are all for a  
21 similar purpose, multiple locations. For construction-manager-at-risk  
22 construction services and design-build construction services to be performed  
23 at multiple locations:

24 (i) At the time the request for qualifications is issued, the  
25 purchasing agency must intend to commence all construction at each location  
26 within thirty months after execution of the first contract for  
27 preconstruction services or other construction services at any of the  
28 locations.

29 (ii) The request for qualifications must include the information  
30 described in paragraph 2, subdivision (g) of this subsection.

31 (e) If the purchasing agency enters into the first contract for  
32 preconstruction services, construction services or professional services as  
33 the result of the procurement, the procurement under this section ends.  
34 After execution of that first contract the purchasing agency may not use the  
35 procurement or the existing final list in the procurement as the basis for  
36 entering into a contract with any other person or firm that participated in  
37 the procurement.

38 (f) Notwithstanding any other provision of this section specifying the  
39 number of persons or firms to be interviewed, the number of persons or firms  
40 to be on a final list or any other numerical specification in this section:

41 (i) If a smaller number of persons or firms ~~respond~~ **RESPONDS** to the  
42 request for qualifications or if one or more persons or firms drop out of the  
43 procurement so that there is a smaller number of persons or firms  
44 participating in the procurement, the purchasing agency, as the purchasing  
45 agency determines necessary or appropriate, may elect to proceed with the

1 procurement with the participating persons or firms if there are at least two  
2 participating responsive and responsible persons or firms. Alternatively,  
3 the purchasing agency may elect to terminate the procurement.

4 (ii) As to a request for qualifications for professional services or  
5 construction services to be negotiated pursuant to subsection E of this  
6 section only, if only one responsive and responsible person or firm responds  
7 to the request for qualifications or if one or more persons or firms drop out  
8 of the procurement so that only one responsive and responsible person or firm  
9 remains in the procurement, the director may elect to proceed with the  
10 procurement with only one person or firm if the director determines in  
11 writing that the fee negotiated pursuant to subsection E of this section is  
12 fair and reasonable and that either other prospective persons or firms had  
13 reasonable opportunity to respond or there is not adequate time for a  
14 resolicitation.

15 (iii) If a person or firm on the final list withdraws or is removed  
16 from the procurement and the selection committee determines that it is in the  
17 best interest of the state, the selection committee may replace that person  
18 or firm on the final list with another person or firm that submitted  
19 qualifications in the procurement and that is selected by the selection  
20 committee as the next most qualified.

21 2. The purchasing agency shall issue a request for qualifications for  
22 each procurement and give adequate public notice of the request for  
23 qualifications in the same manner as provided in section 41-2533. The  
24 request for qualifications shall:

25 (a) State that one contract may or will be awarded, describe the  
26 services to be performed under the contract and state that one person or firm  
27 may or will be awarded the contract.

28 (b) In a procurement of a contract to be negotiated under subsection E  
29 of this section, state that there will be a single final list of at least  
30 three and not more than five persons or firms. In a procurement in which the  
31 contract will be awarded under subsection F of this section, **THE REQUEST FOR**  
32 **QUALIFICATIONS SHALL** state that there will be a single final list and that  
33 the number of persons or firms on the final list will be three.

34 (c) As prescribed below, state the selection criteria and relative  
35 weight of the selection criteria to be used by the selection committee,  
36 except that for construction services one of the criteria shall be the  
37 person's or firm's subcontractor selection plan or procedures to implement  
38 the purchasing agency's subcontractor selection plan. All selection criteria  
39 under this subsection shall be factors that demonstrate competence and  
40 qualifications for the type of professional services or construction services  
41 included in the procurement. If:

42 (i) Interviews will be held, the request for qualifications shall  
43 state the selection criteria and relative weight of the selection criteria to  
44 be used in selecting the persons or firms to be interviewed and the request  
45 for qualifications may state the selection criteria and relative weight of

1 the selection criteria to be used in selecting the persons or firms on the  
2 final list and in determining their order on the final list. The final list  
3 selection criteria and relative weights may be different than the selection  
4 criteria and relative weights used to determine the persons or firms to be  
5 interviewed. The request for qualifications also shall state whether the  
6 purchasing agency will select the persons or firms on the final list and  
7 their order on the final list solely through the results of the interview  
8 process or through the combined results of both the interview process and the  
9 evaluation of statements of qualifications and performance data submitted in  
10 response to the purchasing agency's request for qualifications.

11 (ii) Interviews will not be held, the request for qualifications shall  
12 state the selection criteria and relative weight of the selection criteria to  
13 be used in selecting the persons or firms on the final list and in  
14 determining their order on the final list.

15 (d) If the purchasing agency will hold interviews as part of the  
16 selection process, state that interviews will be held and that the interviews  
17 will be with at least three and no more than five persons or firms.

18 (e) For procurements of construction services, include either:

19 (i) A requirement that each person or firm submit a proposed  
20 subcontractor selection plan and a requirement that the proposed  
21 subcontractor selection plan must select subcontractors based on  
22 qualifications alone or on a combination of qualifications and price and  
23 shall not select subcontractors based on price alone.

24 (ii) A subcontractor selection plan adopted by the purchasing agency  
25 that applies to the person or firm that is selected to perform the  
26 construction services and that requires subcontractors to be selected based  
27 on qualifications alone or on a combination of qualifications and price and  
28 not based on price alone and a requirement that each person or firm must  
29 submit a description of the procedures it proposes to use to implement the  
30 purchasing agency's subcontractor selection plan.

31 (f) Include a description of the publicly available location of the  
32 purchasing agency's protest policy and procedures or, if the purchasing  
33 agency does not have a protest policy and procedures, a statement that the  
34 protest policy and procedures referred to in subsection J of this section  
35 apply to any protests in connection with the procurement.

36 (g) In a procurement of construction-manager-at-risk construction  
37 services or design-build construction services to be performed at multiple  
38 locations, include:

39 (i) A brief description of the construction services to be performed  
40 at each location.

41 (ii) The estimated budget for the construction services to be  
42 performed at each location.

43 (iii) A schedule for the construction services to be performed at each  
44 location that shows the purchasing agency's intent to commence all  
45 construction at each location within thirty months after execution of the

1 first contract for preconstruction services or other construction services at  
2 any of the locations.

3 3. The director or head of a purchasing agency shall initiate an  
4 appropriately qualified selection committee for each request for  
5 qualifications in accordance with rules adopted by the director. The  
6 director or head of a purchasing agency shall ensure that the selection  
7 committee members are competent to serve on the selection committee. Each  
8 selection committee must include one employee of the purchasing agency or a  
9 purchasing agency representative appointed by the purchasing agency. If  
10 procuring professional services, the purchasing agency shall determine the  
11 number and qualifications of the selection committee members. A selection  
12 committee for the procurement of construction services shall not have more  
13 than seven members and shall include at least one person who is a senior  
14 management employee of a licensed contractor and one person who is an  
15 architect or an engineer who is registered pursuant to section 32-121. These  
16 members may be employees of the purchasing agency or outside consultants.  
17 Outside contractors, architects and engineers serving on a selection  
18 committee shall not receive compensation from the purchasing agency for  
19 performing this service, but the purchasing agency may elect to reimburse  
20 outside contractors, architects and engineers for travel, lodging and other  
21 expenses incurred in connection with service on a selection committee. A  
22 person who is a member of a selection committee shall not be a contractor  
23 under a contract awarded under the procurement or provide any professional  
24 services, construction, construction services, materials or other services  
25 under the contract. The selection committee and the purchasing agency shall  
26 do the following:

27 (a) If interviews are specified in the request for qualifications:

28 (i) The selection committee shall determine the person or firms to be  
29 interviewed by evaluating the statements of qualifications and performance  
30 data that are submitted in response to the purchasing agency's request for  
31 qualifications based only on the selection criteria and relative weight of  
32 the selection criteria stated in the request for qualifications to be used to  
33 determine the persons or firms to be interviewed.

34 (ii) If the selection criteria and relative weight of the selection  
35 criteria to be used by the selection committee to select the persons or firms  
36 on the final list and to determine their order on the final list are not  
37 included in the request for qualifications, before the interviews are held  
38 the purchasing agency shall distribute to the persons or firms to be  
39 interviewed the selection criteria and relative weight of the selection  
40 criteria to be used to select the persons or firms on the final list and to  
41 determine their order on the final list. These selection criteria and  
42 relative weight may be different than the selection criteria and relative  
43 weight used to determine the persons or firms to be interviewed.

44 (iii) The selection committee shall conduct interviews with at least  
45 three but not more than five persons or firms as specified in the request for

1 qualifications regarding the professional services or construction services  
2 and the relative methods of approach for furnishing the required professional  
3 services or construction services.

4 (b) Based only on the selection criteria and relative weight of the  
5 selection criteria specified as provided in this subsection for selection of  
6 the persons or firms on the final list and their order on the final list, the  
7 selection committee shall select the persons or firms for the final list and,  
8 in the case of a final list for a contract that will be negotiated under  
9 subsection E of this section, rank the three persons or firms on the final  
10 list in order of preference.

11 (c) If the contract will be negotiated under subsection E of this  
12 section, before or at the same time as the purchasing agency notifies the  
13 highest ranking person or firm on the final list that it is the highest  
14 ranking person or firm, the purchasing agency shall send actual notice to  
15 each of the following that it is not the highest person or firm on the final  
16 list or that another person or firm is the highest ranking person or firm on  
17 the final list:

18 (i) If interviews were held, the other persons and firms interviewed.

19 (ii) If interviews were not held, the other persons and firms that  
20 made submittals.

21 (d) If the contract will be awarded under subsection F of this  
22 section, before or at the same time as the purchasing agency notifies the  
23 persons or firms on the final list that they are on the final list, the  
24 purchasing agency shall send actual notice to each of the following persons  
25 or firms that they are not on the final list or that other persons or firms  
26 are on the final list:

27 (i) If interviews were held, the other persons or firms interviewed.

28 (ii) If interviews were not held, the other persons or firms that made  
29 submittals.

30 D. The director shall award the single contract under the procurement  
31 as provided in subsection E or F of this section.

32 E. The procurement officer shall conduct negotiations with persons or  
33 firms on the final list as follows:

34 1. The procurement is for a single contract for construction services  
35 or professional services, and there is one final list.

36 2. The negotiations shall include consideration of compensation and  
37 other contract terms that the procurement officer determines to be fair and  
38 reasonable to the procurement officer. In making this decision, the  
39 procurement officer shall take into account the estimated value, the scope,  
40 the complexity and the nature of the professional services or construction  
41 services to be rendered.

42 3. The procurement officer shall enter into negotiations  
43 SIMULTANEOUSLY with the THREE highest qualified ~~person or firm~~ PERSONS OR  
44 FIRMS on the final list.

1           4. If the procurement officer is not able to negotiate a satisfactory  
2 contract with ONE OF the THREE highest qualified ~~person or firm~~ PERSONS OR  
3 FIRMS on the final list, at compensation and on other contract terms the  
4 procurement officer determines to be fair and reasonable to this state, the  
5 procurement officer shall formally ~~terminate~~ SUSPEND negotiations with ~~that~~  
6 ~~person or firm~~ THOSE PERSONS OR FIRMS. The procurement officer shall then  
7 undertake negotiations with the next REMAINING most qualified ~~person or firm~~  
8 PERSONS OR FIRMS on the final list ~~in sequence~~ SIMULTANEOUSLY until an  
9 agreement is reached or a determination is made to reject all persons or  
10 firms on the final list.

11           5. If, in a procurement under this section, the procurement officer  
12 ~~terminates~~ SUSPENDS negotiations with a person or firm on the final list and  
13 commences negotiations with another person or firm on the final list, the  
14 procurement officer ~~shall not~~ in that procurement MAY recommence negotiations  
15 or enter into a contract for the construction services or professional  
16 services covered by the final list with any person or firm on the final list  
17 ~~with whom the procurement officer has terminated negotiations.~~

18           F. As an alternative to subsection E of this section, the procurement  
19 officer may award a single contract for design-build construction services or  
20 job-order-contracting construction services as follows:

21           1. The procurement officer shall use the selection committee appointed  
22 for the request for qualifications pursuant to subsection C of this section.

23           2. The procurement officer shall issue a request for proposals to the  
24 persons or firms on the final list developed pursuant to subsection C of this  
25 section.

26           3. The request for proposals shall include:

27           (a) The purchasing agency's project schedule and project final budget  
28 for design and construction or life cycle budget for a procurement that  
29 includes maintenance services or operations services.

30           (b) A statement that the contract will be awarded to the person or  
31 firm whose proposal receives the highest number of points under a scoring  
32 method.

33           (c) A description of the scoring method, including a list of the  
34 factors in the scoring method and the number of points allocated to each  
35 factor. The factors in the scoring method may include:

36           (i) For design-build construction services only, demonstrated  
37 compliance with the design requirements.

38           (ii) Offeror qualifications.

39           (iii) Offeror financial capacity.

40           (iv) Compliance with the purchasing agency's project schedule.

41           (v) For design-build construction services only, if the request for  
42 proposals specifies that the purchasing agency will spend its project budget  
43 and not more than its project budget and is seeking the best proposal for the  
44 project budget, compliance of the offeror's price or life cycle price for  
45 procurements that include maintenance services, operations services or

1 finance services with the purchasing agency's budget as prescribed in the  
2 request for proposals.

3 (vi) For design-build construction services if the request for  
4 proposals does not contain the specifications prescribed in item (v) OF THIS  
5 SUBDIVISION and for job-order-contracting construction services, the price or  
6 life cycle price for procurements that include maintenance services,  
7 operations services or finance services.

8 (vii) An offeror quality management plan.

9 (viii) Other evaluation factors that demonstrate competence and  
10 qualifications for the type of construction services in the request for  
11 proposals as determined by the purchasing agency, if any.

12 (d) For design-build construction services only, the design  
13 requirements.

14 (e) A requirement that each offeror submit separately a technical  
15 proposal and a price proposal and that the offeror's entire proposal be  
16 responsive to the requirements in the request for proposals. For  
17 design-build construction services, the price in the price proposal shall be  
18 a fixed price or a guaranteed maximum price.

19 (f) A statement that in applying the scoring method the selection  
20 committee will separately evaluate the technical proposal and the price  
21 proposal and will evaluate and score the technical proposal before opening  
22 the price proposal.

23 (g) If the purchasing agency conducts discussions pursuant to  
24 paragraph 5 of this subsection, a statement that discussions will be held and  
25 a requirement that each offeror submit a preliminary technical proposal  
26 before the discussions are held.

27 4. If the purchasing agency determines to conduct discussions pursuant  
28 to paragraph 5 of this subsection, each offeror shall submit a preliminary  
29 technical proposal to the purchasing agency before those discussions are  
30 held.

31 5. If determined by the purchasing agency and included by the  
32 purchasing agency in the request for proposals, the selection committee shall  
33 conduct discussions with all offerors that submit preliminary technical  
34 proposals. Discussions shall be for the purpose of clarification to ensure  
35 full understanding of, and responsiveness to, the solicitation requirements.  
36 Offerors shall be accorded fair treatment with respect to any opportunity for  
37 discussion and for clarification by the owner. Revision of preliminary  
38 technical proposals shall be permitted after submission of preliminary  
39 technical proposals and before award for the purpose of obtaining best and  
40 final proposals. In conducting any discussions, information derived from  
41 proposals submitted by competing offerors shall not be disclosed to other  
42 competing offerors.

43 6. After completion of any discussions pursuant to paragraph 5 of this  
44 subsection or if no discussions are held, each offeror shall submit  
45 separately its final technical proposal and its price proposal.

1           7. Before opening any price proposal, the selection committee shall  
2 open the final technical proposals, evaluate the final technical proposals  
3 and score the final technical proposals using the scoring method in the  
4 request for proposals. No other factors or criteria may be used in the  
5 evaluation and scoring.

6           8. After completion of the evaluation and scoring of all final  
7 technical proposals, the selection committee shall open the price proposals,  
8 evaluate the price proposals, score the price proposals and complete the  
9 scoring of the entire proposals using the scoring method in the request for  
10 proposals. No other factors or criteria may be used in the evaluation and  
11 scoring.

12           9. The procurement officer shall award the contract or contracts to  
13 the responsive and responsible offeror whose proposal receives the highest  
14 score under the method of scoring in the request for proposals. No other  
15 factors or criteria may be used in the evaluation. Before or at the same  
16 time as the purchasing agency notifies the winning offeror that it has won,  
17 the purchasing agency shall send actual notice to each other offeror either  
18 that the offeror has not won or that another offeror has won.

19           10. The contract or contracts file shall contain the basis on which the  
20 award is made, including at a minimum the information and documents required  
21 under subsection G of this section.

22           11. For design-build construction services only, the procurement  
23 officer shall award a stipulated fee equal to a percentage, as prescribed in  
24 the request for proposals, of the purchasing agency's project final budget  
25 for design and construction, as prescribed in the request for proposals, but  
26 not less than two-tenths of one per cent of the project final budget for  
27 design and construction to each final list offeror who provides a responsive,  
28 but unsuccessful, proposal. If the procurement officer does not award a  
29 contract, all responsive final list offerors shall receive the stipulated fee  
30 based on the purchasing agency's project final budget for design and  
31 construction as included in the request for proposals. The procurement  
32 officer shall pay the stipulated fee to each offeror within ninety days after  
33 the award of the initial contract or the decision not to award a  
34 contract. In consideration for paying the stipulated fee, the procurement  
35 officer may use any ideas or information contained in the proposals in  
36 connection with any contract awarded for the project, or in connection with a  
37 subsequent procurement, without any obligation to pay any additional  
38 compensation to the offerors. Notwithstanding the other provisions of this  
39 paragraph, an offeror may elect to waive the stipulated fee. If an offeror  
40 elects to waive the stipulated fee, the purchasing agency may not use ideas  
41 and information contained in the offeror's proposal, except that this  
42 restriction does not prevent the purchasing agency from using any idea or  
43 information if the idea or information is also included in a proposal of an  
44 offeror that accepts the stipulated fee.

1 G. At a minimum, the purchasing agency shall retain the following for  
2 each procurement under this section:

3 1. For each request for qualifications procurement process under  
4 subsection C of this section:

5 (a) If interviews were not held:

6 (i) The submittal of the person or firm listed first on the final list  
7 and, if different, the submittal of the person or firm with which the  
8 purchasing agency enters into a contract.

9 (ii) The final list.

10 (iii) A list of the selection criteria and relative weight of  
11 selection criteria used to select the persons or firms for the final list and  
12 to determine their order on the final list.

13 (iv) A list that contains the name of each person or firm that  
14 submitted qualifications and that shows the person's or firm's final overall  
15 rank or score.

16 (v) A document or documents that show the final score or rank on each  
17 selection ~~criteria~~ CRITERION of each person or firm that submitted  
18 qualifications and that support the final overall rankings and scores of the  
19 persons or firms that submitted qualifications. At the election of the  
20 purchasing agency, this documentation may be in the form of a consolidated  
21 scoring sheet for the entire selection committee, in the form of individual  
22 scoring sheets for individual selection committee members or IN any other  
23 form as determined by the purchasing agency.

24 (b) If interviews were held:

25 (i) All submittals of the person or firm listed first on the final  
26 list and, if different, all submittals of the person or firm with which the  
27 purchasing agency enters into a contract.

28 (ii) The final list.

29 (iii) A list of the selection criteria and relative weight of  
30 selection criteria used to select the persons or firms for the final list and  
31 to determine their order on the final list.

32 (iv) A list that contains the name of each person or firm that was  
33 interviewed and that shows the person's or firm's final overall rank or  
34 score.

35 (v) A document or documents that show the final score or rank on each  
36 selection ~~criteria~~ CRITERION of each person or firm that was interviewed and  
37 that support the final overall rankings and scores of the persons or firms  
38 that were interviewed. At the election of the purchasing agency, this  
39 documentation may be in the form of a consolidated scoring sheet for the  
40 entire selection committee, in the form of individual scoring sheets for  
41 individual selection committee members or IN any other form as determined by  
42 the purchasing agency.

43 (vi) A list of the selection criteria and relative weight of the  
44 selection criteria used to select the persons or firms for the short list to  
45 be interviewed.

1 (vii) A list that contains the name of each person or firm that  
2 submitted qualifications and that shows the person's or firm's final overall  
3 rank or score in the selection of the persons or firms to be on the short  
4 list to be interviewed.

5 (viii) A document or documents that show the final score or rank on  
6 each selection ~~criteria~~ CRITERION of each person or firm that submitted  
7 qualifications and that support the final overall rankings and scores of the  
8 persons or firms that submitted qualifications in the selection of the  
9 persons or firms to be on the short list to be interviewed. At the election  
10 of the purchasing agency, this documentation may be in the form of a  
11 consolidated scoring sheet for the entire selection committee, in the form of  
12 individual scoring sheets for the individual selection committee members or  
13 IN any other form as determined by the purchasing agency.

14 2. For each request for proposals procurement process under subsection  
15 F of this section:

16 (a) The entire proposal submitted by the person or firm that received  
17 the highest score in the scoring method in the request for proposals and, if  
18 different, the entire proposal submitted by the person or firm with which the  
19 purchasing agency enters into a contract.

20 (b) The description of the scoring method, the list of factors in the  
21 scoring method and the number of points allocated to each factor, all as  
22 included in the request for proposals.

23 (c) A list that contains the name of each offeror that submitted a  
24 proposal and that shows the offeror's final overall score.

25 (d) A document or documents that show the final score on each factor  
26 in the scoring method in the request for proposals of each offeror that  
27 submitted a proposal and that support the final overall scores of the  
28 offerors that submitted proposals. At the election of the purchasing agency,  
29 this documentation may be in the form of a consolidated scoring sheet for the  
30 entire selection committee, in the form of individual scoring sheets for  
31 individual selection committee members or IN any other form as determined by  
32 the purchasing agency.

33 H. Information relating to each procurement under this section shall  
34 be made available to the public as follows:

35 1. Notwithstanding title 39, chapter 1, article 2, until the  
36 purchasing agency awards a contract or terminates the procurement, only the  
37 name of each person or firm on the final list developed pursuant to  
38 subsection C of this section may be made available to the public. All other  
39 information received by the purchasing agency in response to the request for  
40 qualifications pursuant to subsection C of this section or contained in  
41 proposals submitted pursuant to subsection F of this section shall be  
42 confidential in order to avoid disclosure of the contents that may be  
43 prejudicial to competing submitters and offerors during the selection  
44 process.

1           2. After the purchasing agency awards the contract or terminates the  
2 procurement, the purchasing agency shall make available to the public  
3 pursuant to title 39, chapter 1, article 2 at a minimum all of the items that  
4 the purchasing agency is required to retain under subsection G of this  
5 section, except the proposals submitted in response to a request for  
6 proposals under subsection F of this section and the document or documents  
7 prescribed in subsection G, paragraph 1, subdivision (a), item (v) and  
8 subdivision (b), items (v) and (viii) and paragraph 2, subdivision (d) of  
9 this section.

10           3. The proposals submitted under subsection F of this section shall  
11 not be made available to the public until after the purchasing agency has  
12 entered into a contract or terminated the procurement. At a minimum the  
13 proposals submitted under subsection F of this section that the purchasing  
14 agency is required to retain under subsection G of this section shall be made  
15 available to the public after the purchasing agency has entered into a  
16 contract or terminated the procurement.

17           4. To the extent that the offeror designates and the purchasing agency  
18 concurs, trade secrets and other proprietary data contained in a proposal  
19 remain confidential.

20           5. The document or documents prescribed in subsection G, paragraph 1,  
21 subdivision (a), item (v) and subdivision (b), items (v) and (viii) and  
22 paragraph 2, subdivision (d) of this section are available to the extent  
23 provided in title 39, chapter 1, article 2.

24           I. A purchasing agency may cancel a request for qualifications or a  
25 request for proposals, reject in whole or in part any or all submissions of  
26 qualifications or proposals or determine not to enter into a contract as  
27 specified in the solicitation if it is in the best interest of the purchasing  
28 agency. The purchasing agency shall make the reasons for cancellation,  
29 rejection or determination not to enter into a contract part of the contract  
30 file.

31           J. If the purchasing agency does not have a procurement protest policy  
32 and procedures that have been formally adopted and published by the  
33 purchasing agency, for protests relating to procurements under this section  
34 the purchasing agency shall follow the procurement protest policy and  
35 procedures of the department. The purchasing agency shall process all  
36 protests relating to procurements under this section.

37           K. For the purposes of this section, "professional services" includes  
38 architect services, engineer services, landscape architect services, assayer  
39 services, geologist services and land surveying services and any combination  
40 of those services.