

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

HOUSE BILL 2188

AN ACT

AMENDING SECTION 34-603, ARIZONA REVISED STATUTES; RELATING TO PROCUREMENT OF CONSTRUCTION SERVICES.

(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 to the request for
32 qualifications or if one or more persons or firms drop out of the procurement
33 so that there is a smaller number of persons or firms participating in the
34 procurement, the agent may elect to proceed with the procurement with the
35 participating persons or firms if there are at least two participating
36 responsive and responsible persons or firms. Alternatively, the agent may
37 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, state that there
23 will be a single final list and that the number of persons or firms on the
24 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 with the highest qualified
33 person or firm on the final list.

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

41 5. If in a procurement under this section the agent terminates
42 negotiations with a person or firm on the final list and commences
43 negotiations with another person or firm on the final list, the agent shall
44 not in that procurement recommence negotiations or enter into a contract for
45 the construction services or professional services covered by the final list

1 with any person or firm on the final list with whom the agent has terminated
2 negotiations.

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

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

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

10 3. The request for proposals shall include:

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

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

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

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

21 (ii) Offeror qualifications.

22 (iii) Offeror financial capacity.

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

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

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

36 (vii) An offeror quality management plan.

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

40 (d) For design-build construction services only, the design
41 requirements.

42 (e) A requirement that each offeror submit separately a technical
43 proposal and a price proposal and that the offeror's entire proposal be
44 responsive to the requirements in the request for proposals. For

1 design-build construction services, the price in the price proposal shall be
2 a fixed price or a guaranteed maximum price.

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

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

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

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

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

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

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

39 9. The agent shall award the contract or contracts to the responsive
40 and responsible offeror whose proposal receives the highest score under the
41 method of scoring in the request for proposals. No other factors or criteria
42 may be used in the evaluation. Before or at the same time as the agent
43 notifies the winning offeror that it has won, the agent shall send actual
44 notice to each other offeror either that the offeror has not won or that
45 another offeror has won.

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

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

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

27 1. For each request for qualifications procurement process under
28 subsection C [OR PURSUANT TO SUBSECTION K, PARAGRAPH 2](#) of this section:

29 (a) If interviews were not held:

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

33 (ii) The final list.

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

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

40 (v) A document or documents that show the final score or rank on each
41 selection criteria of each person or firm that submitted qualifications and
42 that support the final overall rankings and scores of the persons or firms
43 that submitted qualifications. At the election of the agent, this
44 documentation may be in the form of a consolidated scoring sheet for the
45 entire selection committee, in the form of individual scoring sheets for

1 individual selection committee members or any other form as determined by the
2 agent.

3 (b) If interviews were held:

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

7 (ii) The final list.

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

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

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

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

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

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

37 2. For each request for proposals procurement process under subsection
38 F OR SUBSECTION K, PARAGRAPH 3 of this section:

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

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

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

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

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

13 1. Notwithstanding title 39, chapter 1, article 2, until the agent
14 awards a contract or terminates the procurement, only the name of each person
15 or firm on the final list developed pursuant to subsection C [OR SUBSECTION K,](#)
16 [PARAGRAPH 2](#) of this section may be made available to the public. All other
17 information received by the agent in response to the request for
18 qualifications pursuant to subsection C [OR SUBSECTION K, PARAGRAPH 2](#) of this
19 section or contained in proposals submitted pursuant to subsection F [OR](#)
20 [SUBSECTION K, PARAGRAPH 3](#) of this section shall be confidential in order to
21 avoid disclosure of the contents that may be prejudicial to competing
22 submitters and offerors during the selection process.

23 2. After the agent awards the contract or terminates the procurement,
24 the agent shall make available to the public pursuant to title 39, chapter 1,
25 article 2 at a minimum all of the items that the agent is required to retain
26 under subsection G of this section, except the proposals submitted in
27 response to a request for proposals under subsection F [OR SUBSECTION K,](#)
28 [PARAGRAPH 3](#) of this section and the document or documents prescribed in
29 subsection G, paragraph 1, subdivision (a), item (v) and subdivision (b),
30 items (v) and (viii) and paragraph 2, subdivision (d) of this section.

31 3. The proposals submitted under subsection F [OR SUBSECTION K,](#)
32 [PARAGRAPH 3](#) of this section shall not be made available to the public until
33 after the agent has entered into a contract or terminated the procurement.
34 At a minimum the proposals submitted under subsection F [OR SUBSECTION K,](#)
35 [PARAGRAPH 3](#) of this section that the agent is required to retain under
36 subsection G of this section shall be made available to the public after the
37 agent has entered into a contract or terminated the procurement.

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

41 5. The document or documents prescribed in subsection G, paragraph 1,
42 subdivision (a), item (v) and subdivision (b), items (v) and (viii) and
43 paragraph 2, subdivision (d) of this section are available to the extent
44 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. NOTWITHSTANDING ANY OTHER LAW, IN A PROCUREMENT OF A SINGLE
15 CONTRACT FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES FOR
16 HORIZONTAL CONSTRUCTION UNDER THIS SECTION WHEN THE UNITED STATES FEDERAL
17 AVIATION ADMINISTRATION OR THE UNITED STATES FEDERAL TRANSIT ADMINISTRATION
18 IS A SOURCE OF MONIES FOR THE PROJECT AND PRICE COMPETITION IS REQUIRED BY
19 THE FUNDING FEDERAL AGENCY OR APPLICABLE FEDERAL LAW, RULES OR REGULATIONS,
20 AN AGENT THAT IS A CITY WITH A POPULATION IN EXCESS OF ONE MILLION PERSONS OR
21 AN AGENT THAT IS A SEPARATE LEGAL ENTITY FORMED UNDER SECTION 11-952 BY A
22 CITY WITH A POPULATION IN EXCESS OF ONE MILLION PERSONS AND THAT IS
23 DESIGNATED AS A SUBGRANTEE BY A CITY WITH A POPULATION IN EXCESS OF ONE
24 MILLION PERSONS, MAY DO A TWO-STEP COMPETITION IN ACCORDANCE WITH THE
25 FOLLOWING:

26 1. EXCEPT AS PROVIDED IN PARAGRAPHS 2 AND 3 OF THIS SUBSECTION, ALL
27 PROVISIONS OF LAW APPLICABLE TO CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
28 SERVICES APPLY TO CONSTRUCTION-MANAGER-AT-RISK SERVICES FOR HORIZONTAL
29 CONSTRUCTION PROCURED UNDER THIS SUBSECTION, INCLUDING THE PROVISIONS
30 APPLICABLE TO HORIZONTAL CONSTRUCTION. THE REQUIREMENTS IN SUBSECTION B OF
31 SECTION 34-605 APPLY ONLY IF THE CONTRACTOR PROVIDES PRECONSTRUCTION
32 SERVICES. BID SECURITY IS NOT REQUIRED UNDER SECTION 34-608 FOR
33 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES FOR HORIZONTAL
34 CONSTRUCTION PROCURED UNDER THIS SUBSECTION, BUT AN AGENT MAY ELECT TO
35 REQUIRE BID SECURITY IN WHICH EVENT THE BID SECURITY PROCESS AND REQUIREMENTS
36 SHALL BE AS SET FORTH IN SECTION 34-608.

37 2. IN THE FIRST STEP OF THE TWO-STEP COMPETITION FOR PROCUREMENT OF
38 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES FOR HORIZONTAL
39 CONSTRUCTION, THE AGENT SHALL FOLLOW THE REQUEST FOR QUALIFICATIONS PROCESS
40 AND THE REQUIREMENTS IN SUBSECTION C OF THIS SECTION. FOR PURPOSES OF
41 APPLYING THE REQUIREMENTS IN SUBSECTION C, PARAGRAPH 1, SUBDIVISION (f),
42 ITEM (ii), SUBSECTION C, PARAGRAPH 2, SUBDIVISION (b) AND SUBSECTION C,
43 PARAGRAPH 3, SUBDIVISIONS (b), (c) AND (d) OF THIS SECTION ONLY, A
44 PROCUREMENT UNDER THIS SUBSECTION SHALL BE DEEMED TO BE PROCUREMENT OF A

1 CONTRACT TO BE AWARDED UNDER SUBSECTION F OF THIS SECTION AND NOT OF A
2 CONTRACT TO BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION.

3 3. IN THE SECOND STEP OF THE TWO-STEP COMPETITION:

4 (a) THE AGENT SHALL USE THE SELECTION COMMITTEE APPOINTED FOR THE
5 REQUEST FOR QUALIFICATIONS PURSUANT TO SUBSECTION C OF THIS SECTION.

6 (b) THE AGENT SHALL ISSUE A REQUEST FOR PROPOSALS TO THE OFFERORS ON
7 THE FINAL LIST DEVELOPED PURSUANT TO SUBSECTION C OF THIS SECTION.

8 (c) THE REQUEST FOR PROPOSALS SHALL INCLUDE:

9 (i) A STATEMENT THAT ONE CONTRACT MAY OR WILL BE AWARDED AND THAT ONE
10 OFFEROR MAY OR WILL BE AWARDED THE CONTRACT.

11 (ii) A DESCRIPTION OF THE CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
12 SERVICES FOR HORIZONTAL CONSTRUCTION TO BE PERFORMED UNDER THE CONTRACT.

13 (iii) A REQUIREMENT THAT EACH OFFEROR SUBMIT SEPARATELY A QUALITATIVE
14 AND TECHNICAL PROPOSAL AND A PRICE PROPOSAL AND THAT THE OFFEROR'S ENTIRE
15 PROPOSAL BE RESPONSIVE TO THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.

16 (iv) THE REQUIRED CONTENTS OF THE QUALITATIVE AND TECHNICAL PROPOSALS
17 AND THE PRICE PROPOSALS.

18 (v) INFORMATION TO BE USED BY OFFERORS TO PREPARE THE QUALITATIVE AND
19 TECHNICAL PROPOSALS AND THE PRICE PROPOSALS.

20 (vi) A STATEMENT THAT IN APPLYING THE SCORING METHOD THE SELECTION
21 COMMITTEE WILL EVALUATE AND SCORE THE QUALITATIVE AND TECHNICAL PROPOSALS
22 BEFORE OPENING THE PRICE PROPOSALS.

23 (vii) A STATEMENT THAT THE AGENT WILL USE THE SCORING METHOD DESCRIBED
24 IN THE REQUEST FOR PROPOSALS TO DETERMINE THE WINNING OFFEROR AND THAT THE
25 WINNING OFFEROR WILL BE THE OFFEROR WHOSE PROPOSAL RECEIVES THE HIGHEST
26 NUMBER OF POINTS UNDER THE SCORING METHOD.

27 (viii) A DESCRIPTION OF THE SCORING METHOD. THE SCORING METHOD SHALL
28 BE A BEST-VALUE METHOD IN WHICH THE AGENT ESTABLISHES CRITERIA TO SCORE THE
29 QUALITATIVE AND TECHNICAL PROPOSAL AND SEPARATE CRITERIA TO SCORE THE PRICE
30 PROPOSAL AND THE NUMBER OF POINTS ASSIGNED TO EACH CRITERIA. THE NUMBER OF
31 POINTS ASSIGNED TO PRICE CRITERIA SHALL NOT EXCEED TEN PERCENT OF THE TOTAL
32 NUMBER OF POINTS IN THE SCORING METHOD.

33 (ix) IF THE AGENT ELECTS TO CONDUCT DISCUSSIONS PURSUANT TO
34 PARAGRAPH 3, SUBDIVISION (e) OF THIS SUBSECTION, A STATEMENT THAT DISCUSSIONS
35 WILL BE HELD AND A REQUIREMENT THAT EACH OFFEROR SUBMIT A PRELIMINARY
36 QUALITATIVE AND TECHNICAL PROPOSAL BEFORE THE DISCUSSIONS ARE HELD.

37 (d) IF THE AGENT DETERMINES TO CONDUCT DISCUSSIONS PURSUANT TO
38 PARAGRAPH 3, SUBDIVISION (e) OF THIS SUBSECTION, EACH OFFEROR SHALL SUBMIT A
39 PRELIMINARY QUALITATIVE AND TECHNICAL PROPOSAL TO THE AGENT BEFORE THOSE
40 DISCUSSIONS ARE HELD.

41 (e) IF DETERMINED BY THE AGENT AND INCLUDED BY THE AGENT IN THE
42 REQUEST FOR PROPOSALS, THE SELECTION COMMITTEE SHALL CONDUCT DISCUSSIONS WITH
43 ALL OFFERORS SOLELY ABOUT THEIR PRELIMINARY QUALITATIVE AND TECHNICAL
44 PROPOSALS. DISCUSSIONS SHALL BE FOR THE PURPOSE OF CLARIFICATION TO ENSURE
45 FULL UNDERSTANDING OF, AND RESPONSIVENESS TO, THE SOLICITATION REQUIREMENTS,

1 OTHER THAN PRICE. OFFERORS SHALL BE ACCORDED FAIR TREATMENT WITH RESPECT TO
2 ANY OPPORTUNITY FOR DISCUSSION AND FOR CLARIFICATION BY THE SELECTION
3 COMMITTEE. REVISION OF PRELIMINARY QUALITATIVE AND TECHNICAL PROPOSALS SHALL
4 BE PERMITTED AFTER SUBMISSION OF PRELIMINARY QUALITATIVE AND TECHNICAL
5 PROPOSALS AND BEFORE SCORING OF PROPOSALS FOR THE PURPOSE OF OBTAINING BEST
6 AND FINAL PROPOSALS. IN CONDUCTING ANY DISCUSSIONS, INFORMATION DERIVED FROM
7 THE PRELIMINARY QUALITATIVE AND TECHNICAL PROPOSALS SUBMITTED BY COMPETING
8 OFFERORS SHALL NOT BE DISCLOSED TO OTHER COMPETING OFFERORS. PRICE SHALL NOT
9 BE PART OF THE DISCUSSIONS.

10 (f) AFTER COMPLETION OF ANY DISCUSSIONS PURSUANT TO PARAGRAPH 3,
11 SUBDIVISION (e) OF THIS SUBSECTION OR IF NO DISCUSSIONS ARE HELD, EACH
12 OFFEROR SHALL SUBMIT SEPARATELY THE OFFEROR'S FINAL QUALITATIVE AND TECHNICAL
13 PROPOSAL AND ITS PRICE PROPOSAL.

14 (g) IN EVALUATING AND SCORING THE OFFERORS' PROPOSALS THE SELECTION
15 COMMITTEE SHALL USE THE SCORING METHOD SPECIFIED IN THE REQUEST FOR
16 PROPOSALS.

17 (h) BEFORE OPENING ANY PRICE PROPOSAL, THE SELECTION COMMITTEE SHALL
18 OPEN THE FINAL QUALITATIVE AND TECHNICAL PROPOSALS, EVALUATE THE FINAL
19 QUALITATIVE AND TECHNICAL PROPOSALS AND SCORE THE FINAL QUALITATIVE AND
20 TECHNICAL PROPOSALS USING THE QUALITATIVE AND TECHNICAL CRITERIA AND ASSIGNED
21 POINTS IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS. NO OTHER FACTORS
22 OR CRITERIA MAY BE USED IN THE EVALUATION AND SCORING.

23 (i) AFTER COMPLETION OF THE EVALUATION AND SCORING OF ALL FINAL
24 QUALITATIVE AND TECHNICAL PROPOSALS, THE SELECTION COMMITTEE SHALL OPEN THE
25 PRICE PROPOSALS AND SCORE THE PRICE PROPOSALS USING THE PRICE CRITERIA AND
26 ASSIGNED POINTS IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS. NO OTHER
27 FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND SCORING.

28 (j) AFTER EVALUATING AND SCORING THE PRICE PROPOSALS, THE SELECTION
29 COMMITTEE SHALL ADD THE QUALITATIVE AND TECHNICAL PROPOSAL SCORE AND THE
30 PRICE PROPOSAL SCORE OF EACH OFFEROR TOGETHER FOR A TOTAL SCORE. THE
31 RESPONSIVE AND RESPONSIBLE OFFEROR WITH THE HIGHEST TOTAL SCORE IS THE
32 WINNING OFFEROR.

33 (k) THE AGENT SHALL PROMPTLY NOTIFY THE WINNING OFFEROR THAT IT IS THE
34 WINNER. BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE WINNING OFFEROR
35 THAT IT IS THE WINNER, THE AGENT SHALL SEND ACTUAL NOTICE TO EACH OTHER
36 OFFEROR EITHER THAT THE OFFEROR IS NOT THE WINNER OR THAT ANOTHER OFFEROR IS
37 THE WINNER.

38 (l) THE CONTRACT OR CONTRACTS FILE SHALL CONTAIN THE BASIS ON WHICH
39 THE AWARD IS MADE, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS
40 REQUIRED UNDER SUBSECTION G OF THIS SECTION.

41 4. NOTWITHSTANDING THIS SUBSECTION, AN AGENT SHALL NOT PROCURE ANY
42 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES FOR HORIZONTAL
43 CONSTRUCTION PURSUANT TO THIS SUBSECTION AFTER JUNE 30, 2018. FOR THE
44 PURPOSES OF THIS PARAGRAPH, AN AGENT PROCURES CONSTRUCTION-MANAGER-AT-RISK
45 CONSTRUCTION SERVICES FOR HORIZONTAL CONSTRUCTION PURSUANT TO THIS SUBSECTION

1 WHEN THE CONTRACT FOR THE CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES
2 FOR HORIZONTAL CONSTRUCTION IS EXECUTED BY THE AGENT AND THE CONTRACTOR. IF
3 A CONTRACT IS EXECUTED FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES
4 FOR HORIZONTAL CONSTRUCTION PROCURED PURSUANT TO THIS SUBSECTION ON OR BEFORE
5 JUNE 30, 2018, CONSTRUCTION SERVICES UNDER THE CONTRACT MAY BE RENDERED IN
6 WHOLE OR IN PART AFTER JUNE 30, 2018.

7 ~~K.~~ L. For the purposes of this section, "professional services"
8 includes architect services, engineer services, landscape architect services,
9 assayer services, geologist services and land surveying services and any
10 combination of those services.

11 Sec. 2. Intent

12 It is the intent of the legislature in adding a new subsection K to
13 section 34-603, Arizona Revised Statutes, to ensure access by agents
14 described in the new subsection K to funding from the United States Federal
15 Aviation Administration and the United States Federal Transit Administration
16 when a described agent desires to use the construction-manager-at-risk
17 project delivery method for horizontal construction as provided in
18 section 34-603 and title 34, chapter 6, Arizona Revised Statutes, by allowing
19 the described agents to use price as a competitive factor in the selection of
20 a contractor in a procurement of construction-manager-at-risk construction
21 services for horizontal construction. This is a temporary exception to the
22 qualifications only procurement of construction-manager-at-risk construction
23 services for horizontal construction under section 34-603, Arizona Revised
24 Statutes, while work is done to persuade the two federal agencies to approve
25 selection based on qualifications only and without a competitive price
26 factor. The intent is also to limit price to ten percent of the total number
27 of points in the scoring method, to make this exception temporary by having
28 the exception expire on June 30, 2018, to limit the exception to projects
29 with funding from the two named federal agencies and to limit the exception
30 to the described agents.