

REFERENCE TITLE: **procurement; construction; specialized services**

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1458

Introduced by
Senator Huppenthal

AN ACT

AMENDING TITLE 28, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-143; AMENDING SECTIONS 28-7361, 28-7363, 28-7364, 28-7365 AND 28-7366, ARIZONA REVISED STATUTES; RENUMBERING SECTION 28-7367, ARIZONA REVISED STATUTES, AS SECTION 28-7368; AMENDING TITLE 28, CHAPTER 20, ARTICLE 13, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 28-7367; AMENDING SECTIONS 34-101, 34-102, 34-103, 34-602 AND 34-603, ARIZONA REVISED STATUTES; RENUMBERING SECTIONS 34-604, 34-605, 34-606, 34-607, 34-608, 34-609, 34-610 AND 34-611, ARIZONA REVISED STATUTES, AS SECTIONS 34-606, 34-607, 34-608, 34-609, 34-610, 34-611, 34-612 AND 34-613, RESPECTIVELY; AMENDING TITLE 34, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 34-604 AND 34-605; AMENDING SECTIONS 34-608, 34-610 AND 34-611, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 41-2503, 41-2532, 41-2533, 41-2534, 41-2537, 41-2573, 41-2574 AND 41-2578, ARIZONA REVISED STATUTES; RENUMBERING SECTIONS 41-2579 AND 41-2580, ARIZONA REVISED STATUTES, AS SECTIONS 41-2582 AND 41-2583, RESPECTIVELY; AMENDING TITLE 41, CHAPTER 23, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 41-2579 AND 41-2580 AND SECTION 41-2581; AMENDING SECTION 41-2582, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 41-2616, 48-2841 AND 48-2851, ARIZONA REVISED STATUTES; RELATING TO THE PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 28, chapter 1, article 3, Arizona Revised Statutes,
3 is amended by adding section 28-143, to read:

4 28-143. Heavy and commuter rail; construction

5 A. FOR EACH DEPARTMENT FACILITIES PROJECT FOR HEAVY RAIL OR COMMUTER
6 RAIL THE LICENSED CONTRACTOR PERFORMING THE CONSTRUCTION SHALL PERFORM, WITH
7 THE CONTRACTOR'S OWN ORGANIZATION, CONSTRUCTION WORK THAT AMOUNTS TO NOT LESS
8 THAN THIRTY PER CENT OF THE TOTAL CONTRACT PRICE FOR THE CONSTRUCTION.

9 B. PROJECT ELEMENTS SHALL NOT BE ARTIFICIALLY ADDED IN ORDER TO MAKE A
10 PROJECT THAT IS HEAVY RAIL OR COMMUTER RAIL NOT HEAVY RAIL OR COMMUTER RAIL
11 AND SHALL NOT BE ARTIFICIALLY DELETED IN ORDER TO MAKE A PROJECT HEAVY RAIL
12 OR COMMUTER RAIL.

13 C. THIS SECTION APPLIES REGARDLESS OF WHETHER THE PROJECT USES THE
14 DESIGN-BID BUILD, DESIGN-BUILD, CONSTRUCTION-MANAGER-AT-RISK OR
15 JOB-ORDER-CONTRACTING PROJECT DELIVERY METHOD.

16 D. FOR THE PURPOSES OF THIS SECTION:

17 1. HEAVY RAIL AND COMMUTER RAIL DO NOT INCLUDE ANY RELATED RAIL
18 STATIONS, MAINTENANCE FACILITIES OR PARKING FACILITIES.

19 2. A DEPARTMENT FACILITIES PROJECT IS HEAVY RAIL OR COMMUTER RAIL IF
20 MORE THAN ONE-HALF OF THE TOTAL PRICE FOR THE CONSTRUCTION IS FOR HEAVY RAIL
21 OR COMMUTER RAIL.

22 3. THE TOTAL CONTRACT PRICE FOR CONSTRUCTION DOES NOT INCLUDE THE COST
23 OF PRECONSTRUCTION SERVICES OR DESIGN SERVICES, AS DEFINED IN SECTION
24 28-7361, OR ANY OTHER RELATED SERVICES OR THE COST TO PROCURE ANY
25 RIGHT-OF-WAY OR OTHER COST OF CONDEMNATION.

26 Sec. 2. Section 28-7361, Arizona Revised Statutes, is amended to read:

27 28-7361. Definitions

28 In this article, unless the context otherwise requires:

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

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

34 (a) There is a contract for construction services that is separate
35 from the contract for design services, EXCEPT THAT INSTEAD OF A SINGLE
36 CONTRACT FOR CONSTRUCTION SERVICES, THE DEPARTMENT MAY ELECT SEPARATE
37 CONTRACTS FOR PRECONSTRUCTION SERVICES DURING THE DESIGN PHASE, FOR
38 CONSTRUCTION DURING THE CONSTRUCTION PHASE AND FOR ANY OTHER CONSTRUCTION
39 SERVICES.

40 (b) Design services are performed under a separate design services
41 contract, except that as to bridges and other transportation facilities the
42 department may perform with its own employees or force account preliminary
43 design and either:

44 (i) In the case of bridges only, all design services up to final
45 design.

1 (ii) In the case of other transportation facilities, up to twenty per
2 cent of the design work.

3 (c) The contract for construction services may be entered into at the
4 same time as the design services are commenced or at a later time.

5 (d) Design and construction of the project may be in sequential phases
6 or concurrent phases.

7 (e) Finance services, maintenance services, operations services,
8 preconstruction services and other related services may be included.

9 3. "Construction services" means either of the following for
10 construction-manager-at-risk, ONE-STEP DESIGN-BUILD and job-order-contracting
11 project delivery methods:

12 (a) Construction, excluding services, through the
13 construction-manager-at-risk, ONE-STEP DESIGN-BUILD or job-order-contracting
14 project delivery methods.

15 (b) A combination of construction and, as elected by the department,
16 one or more related services, such as finance services, maintenance services,
17 operations services, design services and preconstruction services, as those
18 services are authorized in the definition of construction-manager-at-risk,
19 ONE-STEP DESIGN-BUILD or job-order-contracting.

20 4. "Contract" means all types of department agreements, regardless of
21 what they are called, for procurements pursuant to this article.

22 5. "Contractor" means any person who has a contract with the
23 department.

24 ~~6. "Design-build" means the process of entering into and managing a~~
25 ~~contract between the department and another party in which the other party~~
26 ~~agrees to both design and build a highway, a structure, a facility or other~~
27 ~~items specified in the contract.~~

28 ~~7. "Design builder" means any individual, partnership, joint venture,~~
29 ~~corporation or other legal entity that is appropriately licensed in this~~
30 ~~state and that furnishes the necessary design services, in addition to~~
31 ~~construction of the work, whether by itself or through subcontracts,~~
32 ~~including subcontracts for architectural and engineering services.~~

33 ~~8.~~ 6. "Design services" means architect services, engineer services
34 or landscape architect services.

35 ~~9.~~ 7. "Emergency" means an immediate threat to public health, welfare
36 or safety caused by flood, earthquake, hurricane, tornado, explosion, fire or
37 other catastrophe such that compliance with normal bidding procedures for
38 repair or reconstruction of transportation facilities would be impracticable
39 or contrary to the public interest.

40 ~~10.~~ 8. "Engineer services" means those professional engineer services
41 that are within the scope of engineering practice as provided in title 32,
42 chapter 1.

43 ~~11.~~ 9. "Finance services" means financing for a construction services
44 project.

1 ~~12-~~ 10. "Job-order-contracting" means a project delivery method in
2 which:

3 (a) The contract is for indefinite quantities of construction and, at
4 the election of the department, may or may not include a guaranteed minimum
5 amount of work.

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

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

11 ~~13-~~ 11. "Landscape architect services" means those professional
12 landscape architect services that are within the scope of landscape
13 architectural practice as provided in title 32, chapter 1.

14 ~~14-~~ 12. "Maintenance services" means routine maintenance, repair and
15 replacement of existing facilities, structures, buildings or real property.

16 13. "ONE-STEP DESIGN-BUILD" MEANS A PROJECT DELIVERY METHOD IN WHICH:

17 (a) THERE IS A SINGLE CONTRACT FOR DESIGN SERVICES AND CONSTRUCTION
18 SERVICES, EXCEPT THAT INSTEAD OF A SINGLE CONTRACT FOR DESIGN SERVICES AND
19 CONSTRUCTION SERVICES, THE DEPARTMENT MAY ELECT SEPARATE CONTRACTS FOR
20 PRECONSTRUCTION SERVICES AND DESIGN SERVICES DURING THE DESIGN PHASE, FOR
21 CONSTRUCTION AND DESIGN SERVICES DURING THE CONSTRUCTION PHASE AND FOR ANY
22 OTHER CONSTRUCTION SERVICES.

23 (b) DESIGN AND CONSTRUCTION OF THE PROJECT MAY BE IN SEQUENTIAL PHASES
24 OR CONCURRENT PHASES.

25 (c) FINANCE SERVICES, MAINTENANCE SERVICES, OPERATIONS SERVICES,
26 PRECONSTRUCTION SERVICES AND OTHER RELATED SERVICES MAY BE INCLUDED.

27 ~~15-~~ 14. "Operations services" means routine operation of existing
28 facilities, structures, buildings or real property.

29 ~~16-~~ 15. "Person" means any corporation, business, individual, union,
30 committee, club, other organization or group of individuals.

31 ~~17-~~ 16. "Preconstruction services" means ~~advice~~ SERVICES AND OTHER
32 ACTIVITIES during the design phase.

33 ~~18-~~ 17. "Specific single project" means a project that is constructed
34 at a single location, at a common location or for a common purpose.

35 ~~19-~~ 18. "Subcontractor" means a person who contracts to perform work
36 or render service to a contractor or to another subcontractor as a part of a
37 contract with the department.

38 19. "TWO-STEP DESIGN-BUILD" MEANS THE PROCESS OF ENTERING INTO AND
39 MANAGING A CONTRACT BETWEEN THE DEPARTMENT AND ANOTHER PARTY IN WHICH THE
40 OTHER PARTY AGREES TO BOTH DESIGN AND BUILD A HIGHWAY, A STRUCTURE, A
41 FACILITY OR OTHER ITEMS SPECIFIED IN THE CONTRACT.

42 20. "TWO-STEP DESIGN-BUILDER" MEANS ANY INDIVIDUAL, PARTNERSHIP, JOINT
43 VENTURE, CORPORATION OR OTHER LEGAL ENTITY THAT IS APPROPRIATELY LICENSED IN
44 THIS STATE AND THAT FURNISHES THE NECESSARY DESIGN SERVICES, IN ADDITION TO

1 CONSTRUCTION OF THE WORK, WHETHER BY ITSELF OR THROUGH SUBCONTRACTS,
2 INCLUDING SUBCONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES.

3 Sec. 3. Section 28-7363, Arizona Revised Statutes, is amended to read:
4 28-7363. Two-step design-build method of project delivery

5 A. Notwithstanding any other law, the department may use the TWO-STEP
6 design-build method of project delivery on a project if the department makes
7 a determination in writing that it is appropriate and in the best interests
8 of the department to use the TWO-STEP design-build method of project delivery
9 for that project, except that:

10 1. The department shall not enter into a contract to operate any
11 structure, facility or other item IN A TWO-STEP DESIGN-BUILD PROJECT pursuant
12 to this article.

13 2. Each TWO-STEP design-build project shall be a specific single
14 project.

15 3. The department shall not commence any TWO-STEP design-build project
16 after December 31, 2025. For the purposes of this paragraph, a project is
17 commenced on the date the department solicits the contract for the project.
18 If the department solicits a TWO-STEP design-build contract on or before
19 December 31, 2025, the contract may be executed and services and construction
20 under the contract may be rendered in whole or in part after December 31,
21 2025.

22 B. The estimated cost of the project shall not include the cost to
23 procure any right-of-way or other cost of condemnation. The cost to procure
24 any right-of-way or other cost of condemnation remains at all times the
25 responsibility of the department. The department shall obtain all necessary
26 rights-of-way.

27 C. The department is responsible for preparation and acquisition of
28 all environmental documents, including the scope of any remediation and
29 required clearances.

30 D. If construction of a TWO-STEP design-build project involves
31 railroad facilities, the railroad shall approve the use of the TWO-STEP
32 design-build delivery method before the department awards the TWO-STEP
33 design-build contract.

34 E. To ensure fair, uniform, clear and effective procedures that will
35 deliver a quality project on time and within budget, the director, in
36 conjunction with the appropriate and affected professionals and contractors,
37 may adopt procedures for procuring a project using the TWO-STEP design-build
38 method of project delivery.

39 F. The provisions of sections 28-6923 and 28-6924 relating to bid,
40 performance and payment bonds and to change orders, progress payments,
41 contract retentions, definitions and authority to award contracts apply to
42 department TWO-STEP design-build projects for transportation facilities
43 pursuant to this article.

1 Sec. 4. Section 28-7364, Arizona Revised Statutes, is amended to read:
2 28-7364. Two-step design-build criteria

3 The department shall use the following criteria as the minimum basis
4 for determining when to use the TWO-STEP design-build method of project
5 delivery:

6 1. The extent to which it can adequately define the project
7 requirements.

8 2. The time constraints for delivery of the project.

9 3. The capability and experience of potential teams with the TWO-STEP
10 design-build method of project delivery.

11 4. The suitability of the project for use of the TWO-STEP design-build
12 method of project delivery in the areas of time, schedule, costs and quality.

13 5. The capability of the department to manage the project, including
14 the employment of experienced personnel or outside consultants.

15 6. The capability of the department to oversee the project with
16 persons who are familiar with the TWO-STEP design-build method of project
17 delivery.

18 7. Other criteria the department deems relevant.

19 Sec. 5. Section 28-7365, Arizona Revised Statutes, is amended to read:
20 28-7365. Two-step design-build; two-phase solicitation

21 A. If the department determines that the TWO-STEP design-build method
22 of project delivery is appropriate, the department shall establish a
23 two-phase procedure for awarding the TWO-STEP design-build contract. The
24 department shall limit each solicitation for a TWO-STEP design-build contract
25 to a specific single project.

26 B. During phase one, and before solicitation, the director shall
27 appoint a selection team of at least three persons. At least one-half of the
28 selection team shall be architects or engineers who are registered pursuant
29 to section 32-121. The selection team members may be either department
30 employees or outside consultants. The selection team shall also include at
31 least one person who is a senior management employee of a licensed contractor
32 who is not involved in the project. Any architect or engineer who is serving
33 on the selection team and who is not a department employee shall not be
34 otherwise involved in the project. The department shall prepare documents
35 for a request for qualifications.

36 C. The request for qualifications shall include all of the following:

37 1. The minimum qualifications of the TWO-STEP design-builder.

38 2. A scope of work statement and schedule.

39 3. Documents defining the project requirements.

40 4. The form of contract to be awarded.

41 5. The selection criteria for compiling a short list and the number of
42 firms to be included on the short list. At least three but not more than
43 five firms shall be included on the short list.

44 6. A description of the phase two requirements and subsequent
45 management needed to bring the project to completion.

- 1 7. The maximum time allowable for design and construction.
- 2 8. The department's estimated cost of design and construction.
- 3 D. The selection team shall evaluate the **TWO-STEP** design-build
- 4 qualifications of responding firms and shall compile a short list of firms in
- 5 accordance with technical and qualifications-based criteria. The number of
- 6 firms on the short list shall be the number of firms specified in the request
- 7 for qualifications, except that, if a smaller number of firms responds to the
- 8 solicitation or if one or more of the firms on the short list drop out so
- 9 that only two firms remain on the short list, the selection team may proceed
- 10 with the selection process with the remaining firms if at least two firms
- 11 remain or the ~~selection team~~ DEPARTMENT may readvertise as the ~~selection team~~
- 12 DEPARTMENT deems necessary.
- 13 E. During phase two, the department shall issue a request for
- 14 proposals to the **TWO-STEP** design-builders on the short list. The request
- 15 shall include:
- 16 1. The scope of work, including programmatic, performance and
- 17 technical requirements, conceptual design, specifications and functional and
- 18 operational elements for the delivery of the completed project, which shall
- 19 all be prepared by an architect or engineer, as appropriate, who is
- 20 registered pursuant to section 32-121.
- 21 2. A description of the qualifications required of the **TWO-STEP**
- 22 design-builder and the selection criteria, including the weight or relative
- 23 order, or both, of each criterion.
- 24 3. Copies of the contract documents that the successful proposer will
- 25 be expected to sign.
- 26 4. The maximum time allowable for design and construction.
- 27 5. The department's estimated cost of design and construction.
- 28 6. The requirement that a proposal be segmented into two parts, a
- 29 technical proposal and a price proposal. Each proposal shall be in a
- 30 separately sealed, clearly identified package and shall include the date and
- 31 time of the submittal deadline. The technical proposal shall include a
- 32 schedule, schematic design plans and specifications, technical reports,
- 33 calculations, permit requirements, applicable development fees and other data
- 34 requested in the request for proposals. The price proposal shall contain all
- 35 design, construction, engineering, inspection and construction costs of the
- 36 proposed project.
- 37 7. The date, time and location of the public opening of the sealed
- 38 price proposals.
- 39 8. Other information relevant to the project.
- 40 F. If stated in the request for proposals, in order to inform each
- 41 firm whether the firm's concept is responsive to the request for proposals,
- 42 the department may enter into a separate confidential discussion with each
- 43 firm on the short list to discuss alternative technical concepts that the
- 44 firm may propose.
- 45 G. The department shall proceed as follows:

1 1. The selection team shall review the technical proposals and score
2 the technical proposals using the selection criteria in the request for
3 proposals. The technical review team shall then submit a technical proposal
4 score for each TWO-STEP design-builder to the department. The technical
5 review team shall reject any proposal it deems to be nonresponsive.

6 2. The department shall announce the technical proposal score for each
7 TWO-STEP design-builder, shall publicly open the sealed price proposals and
8 shall divide each TWO-STEP design-builder's price by the score that the
9 selection team has given to it to obtain an adjusted score. The TWO-STEP
10 design-builder selected shall be that responsive and responsible TWO-STEP
11 design-builder whose adjusted score is the lowest.

12 3. If a time factor is included with the selection criteria in the
13 request for proposals package, the department may also adjust the bids using
14 a value of the time factor established by the department. The value of the
15 time factor shall be a value per day. The adjustment shall be based on the
16 total time value. The total time value is the TWO-STEP design-builder's
17 proposed number of days to complete the project multiplied by the factor.
18 The time adjusted price is the total time value plus the bid amount. This
19 adjustment shall be used for selection purposes only and shall not affect the
20 department's liquidated damages schedule or incentive and disincentive
21 program. An adjusted score shall then be obtained by dividing each TWO-STEP
22 design-builder's time adjusted price by the score given by the technical
23 review team. The department shall select the responsive and responsible
24 TWO-STEP design-builder whose adjusted score is the lowest.

25 4. Unless all proposals are rejected, the board shall award the
26 contract to the responsive and responsible TWO-STEP design-builder with the
27 lowest adjusted score. The board reserves the right to reject all proposals.

28 5. The department shall award a stipulated fee equal to two-tenths of
29 one per cent of the department's estimated cost of design and construction to
30 each short list responsible proposer who provides a responsive, but
31 unsuccessful proposal. If the department does not award a contract, all
32 responsive proposers shall receive the stipulated fee. If the department
33 cancels the contract before reviewing the technical proposals, the department
34 shall award each TWO-STEP design-builder on the selected short list a
35 stipulated fee equal to two-tenths of one per cent of the department's
36 estimated cost of design and construction. The department shall pay the
37 stipulated fee to each proposer within ninety days after the award of the
38 contract or the decision not to award a contract. In consideration for
39 paying the stipulated fee, the department may use any ideas or information
40 contained in the proposals in connection with any contract awarded for the
41 project, or in connection with a subsequent procurement, without any
42 obligation to pay any additional compensation to the unsuccessful proposers.
43 Notwithstanding the other provisions of this paragraph, an unsuccessful short
44 list proposer may elect to waive the stipulated fee. If an unsuccessful
45 short list proposer elects to waive the stipulated fee, the department may

1 not use ideas and information contained in the proposer's proposal, except
2 that this restriction does not prevent the department from using any idea or
3 information if the idea or information is also included in a proposal of a
4 short list proposer that accepts the stipulated fee.

5 Sec. 6. Section 28-7366, Arizona Revised Statutes, is amended to read:
6 28-7366. Construction-manager-at-risk construction services,
7 job-order-contracting construction services and
8 one-step design-build construction services

9 A. The department may procure the following services pursuant to this
10 section:

- 11 1. Construction-manager-at-risk construction services.
- 12 2. Job-order-contracting construction services.
- 13 3. ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES.

14 B. The department shall provide notice of each procurement of
15 construction services prescribed in this section and shall award contracts on
16 the basis of demonstrated competence and qualifications for the type of
17 construction services pursuant to the procedures prescribed in this section.

18 C. In the procurement of construction services pursuant to this
19 section:

20 1. The department shall issue a request for qualifications for each
21 contract and publish notice of the request for qualifications in the same
22 manner as provided in section 28-6923. The request for qualifications shall:

23 (a) Include the number of persons or firms to be included on the final
24 list. At least three but not more than five persons or firms shall be on the
25 final list.

26 (b) State the criteria to be used by the selection team to select the
27 person or firm to perform the construction services. The request for
28 qualifications shall also state in a manner determined by the department the
29 relative weight of the selection criteria.

30 (c) If the department will hold interviews as part of the selection
31 process, state that interviews shall be held ~~with~~ AND THE NUMBER OF PERSONS
32 OR FIRMS TO BE INTERVIEWED, WHICH SHALL BE at least the number of persons or
33 firms to be included in the final list but not more than the number of
34 persons or firms to be included in the final list plus two.

35 2. For each request for qualifications, the department shall initiate
36 a selection team pursuant to section 28-7365, subsection B. A person who is
37 a member of a selection team shall not be a contractor under the contract or
38 provide construction, construction services, materials or services under the
39 contract. The selection team shall:

40 (a) Evaluate the statements of qualifications and performance data
41 that are submitted in response to the department's request for
42 qualifications.

43 (b) If determined by the department and included by the department in
44 the request for qualifications, conduct interviews with the number of persons
45 or firms to be interviewed as stated in the request for qualifications

1 regarding the contract and the relative methods of approach for furnishing
2 the required construction services.

3 (c) After any interviews **OR IF INTERVIEWS ARE NOT HELD**, in order of
4 preference, based on the criteria and the weighting of criteria established
5 and published by the department and included in the request for
6 qualifications, select a final list for the contract of persons or firms the
7 selection team deems to be the most qualified to provide the construction
8 services and, in the case of a contract that will be negotiated under
9 subsection E of this section, rank the persons or firms on the final list in
10 order of preference. The selection team shall base the selection of the
11 final list and the order of preference on demonstrated competence and
12 qualifications only. The number of persons or firms on the final list shall
13 be the number of persons or firms specified in the request for
14 qualifications, except that:

15 (i) If a smaller number of responsive and responsible persons or firms
16 respond to the solicitation, the department may have the selection team
17 proceed with the selection process, including interviews and the final list,
18 with the remaining persons or firms if at least two persons or firms remain
19 or the department may readvertise pursuant to this subsection as the
20 department deems necessary or appropriate.

21 (ii) If only one responsive and responsible person or firm responds to
22 a solicitation for a contract to be negotiated pursuant to subsection E of
23 this section, the department may proceed with only one person or firm in the
24 selection process and may award the contract to a single person or firm if
25 the department determines in writing that the fee negotiated pursuant to
26 subsection E of this section is fair and reasonable and that either other
27 prospective persons or firms had reasonable opportunity to respond or there
28 is not adequate time for a resolicitation.

29 (iii) If a person or firm on the final list withdraws or is removed
30 from the selection process and the selection team determines that it is in
31 the best interest of the department, the selection team may replace that
32 person or firm with the person or firm that submitted qualifications and that
33 is selected by the selection team as the next most qualified.

34 (d) Base the selection of the final list and order of preference on
35 the final list on demonstrated competence and qualifications only.

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

43 4. For construction-manager-at-risk construction services **AND ONE-STEP**
44 **DESIGN-BUILD CONSTRUCTION SERVICES**, the contract under a request for
45 qualifications solicitation is limited to a specific single project.

1 D. The department shall award a contract for construction services to
2 one of the persons or firms on the final list prepared pursuant to subsection
3 C of this section as provided in subsection E or F of this section, except
4 that, if fewer than the number of persons or firms on the final list respond
5 to the request for proposals pursuant to subsection F of this section but at
6 least two persons or firms on the final list submit responsive proposals, or
7 if one or more of the persons or firms on the final list drop out of the
8 selection process pursuant to subsection E or F of this section:

9 1. If there are three or more remaining persons or firms, the
10 department shall proceed with the selection process.

11 2. If there are only two remaining persons or firms, as the department
12 deems necessary and appropriate, the department may proceed with the
13 selection process with the two persons or firms or may terminate the
14 selection process and may readvertise pursuant to subsection C of this
15 section.

16 3. If there is only one remaining person or firm, the department may
17 award the contract to a single person or firm **PURSUANT TO SUBSECTION E OF**
18 **THIS SECTION** if the department determines in writing that the fee negotiated
19 pursuant to subsection E of this section is fair and reasonable and that
20 either other prospective persons or firms had reasonable opportunity to
21 respond or there is not adequate time for a resolicitation.

22 E. For the single contract included in the request for qualifications,
23 the department shall enter into negotiations for the contract with the
24 highest qualified person or firm on the final list for the construction
25 services. The negotiations shall include consideration of compensation and
26 other contract terms that the department determines to be fair and reasonable
27 to the department. In making this decision, the department shall take into
28 account the estimated value, the scope, the complexity and the nature of the
29 construction services to be rendered. If the department is not able to
30 negotiate a satisfactory contract with the highest qualified person or firm
31 on the final list at compensation and on other contract terms the department
32 determines to be fair and reasonable, the department shall formally terminate
33 negotiations with that person or firm. The department may undertake
34 negotiations with the next most qualified person or firm on the final list in
35 sequence until an agreement is reached or a determination is made to reject
36 all persons or firms on the final list. If a contract for construction
37 services is entered into pursuant to this subsection:

38 1. If the contract is for construction-manager-at-risk construction
39 services **OR ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES** and includes
40 preconstruction services by the contractor, the department shall enter into a
41 written contract with the contractor for preconstruction services under which
42 the department shall pay the contractor a fee for preconstruction services in
43 an amount agreed by the department and the contractor, and the department
44 shall not request or obtain a fixed price or a guaranteed maximum price for
45 the construction from the contractor or enter into a construction contract

1 with the contractor until after the department has entered into the written
2 contract for preconstruction services and a preconstruction services fee.

3 2. Construction shall not commence until the department and contractor
4 agree in writing on either a fixed price that the department will pay for the
5 construction to be commenced or a guaranteed maximum price for the
6 construction to be commenced.

7 F. As an alternative to subsection E of this section, the department
8 may award job-order-contracting construction services as follows:

9 1. The department shall use the selection team that is appointed for
10 the request for qualifications pursuant to subsection C of this section.

11 2. The department shall issue a request for proposals to the persons
12 or firms on the final list that is developed pursuant to subsection C of this
13 section.

14 3. For job-order-contracting construction services, the request for
15 proposals shall include:

16 (a) The department's project schedule and project final design and
17 construction budget or life cycle budget for a procurement that includes
18 maintenance services or operations services.

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

21 (c) A description of the scoring method, including a list of the
22 factors in the scoring method and the number of points allocated to each
23 factor.

24 (d) A requirement that each offeror separately submit a technical
25 proposal and a price proposal and that the offeror's entire proposal be
26 responsive to the requirements in the request for proposals.

27 (e) A statement that in applying the scoring method the selection team
28 will separately evaluate the technical proposal and the price proposal and
29 will evaluate and score the technical proposal before opening the price
30 proposal.

31 (f) If the department conducts discussions pursuant to paragraph 5 of
32 this subsection, a statement that discussions will be held and a requirement
33 that each offeror submit a preliminary technical proposal before the
34 discussions are held.

35 4. If the department determines to conduct discussions pursuant to
36 paragraph 5 of this subsection, each offeror shall submit a preliminary
37 technical proposal to the department before those discussions are held.

38 5. If determined by the department and included by the department in
39 the request for proposals, the selection team shall conduct discussions with
40 all ~~persons or firms~~ OFFERORS that submit preliminary technical proposals.
41 Discussions shall be for the purpose of clarification to assure ENSURE full
42 understanding of, and responsiveness to, the solicitation requirements. The
43 department shall accord fair treatment to offerors with respect to any
44 opportunity for discussion and for clarification by the owner. Revision of
45 preliminary technical proposals shall be permitted after submission of

1 preliminary technical proposals and before award for the purpose of obtaining
2 the best and final proposals. In conducting any discussions, information
3 derived from proposals submitted by competing offerors shall not be disclosed
4 to other competing offerors.

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

9 7. Before opening any price proposal, the selection team shall open
10 the final technical proposals, evaluate the final technical proposals and
11 score the final technical proposals using the scoring method in the request
12 for proposals. No other factors or criteria may be used in the evaluation
13 and scoring.

14 8. After completion of the evaluation and scoring of all final
15 technical proposals, the selection team shall open the price proposals,
16 evaluate the price proposals, score the price proposals and complete the
17 scoring of the entire proposals using the scoring method in the request for
18 proposals. No other factors or criteria may be used in the evaluation and
19 scoring.

20 9. The department shall award the contract to the responsive and
21 responsible offeror whose proposal receives the highest score under the
22 method of scoring in the request for proposals. No other factors or criteria
23 may be used in the evaluation.

24 10. The contract file shall contain the basis on which the award is
25 made.

26 G. Until an award and execution of a contract by the department, only
27 the name of each person or firm on the final list developed pursuant to
28 subsection C of this section may be made available to the public. All other
29 information received by the department in response to the request for
30 qualifications or contained in the proposals is confidential in order to
31 avoid disclosure of the contents that may be prejudicial to competing
32 offerors during the selection process. The department shall open the
33 proposals to public inspection after the contract is awarded and the
34 department has executed the contract. To the extent that the offeror
35 designates and the department concurs, trade secrets and other proprietary
36 data contained in a proposal remain confidential.

37 H. The department may cancel a request for qualifications or a request
38 for proposals or reject in whole or in part any or all proposals as specified
39 in the solicitation if it is in the best interest of the department. The
40 department shall make the reasons for cancellation or rejection part of the
41 contract file.

1 I. Notwithstanding any other law:

2 1. The contractor for job-order-contracting construction services OR
3 ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES is not required to be registered
4 to perform design services pursuant to title 32, chapter 1 if the person or
5 firm actually performing the design services on behalf of the contractor is
6 appropriately registered.

7 2. The contractor for construction-manager-at-risk CONSTRUCTION
8 SERVICES, ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES or
9 job-order-contracting construction services shall be licensed to perform
10 construction pursuant to title 32, chapter 10.

11 3. For each project under a construction-manager-at-risk construction
12 services contract OR ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES CONTRACT,
13 the licensed contractor performing the contract shall perform, with the
14 contractor's own organization, construction work that amounts to not less
15 than forty per cent of the total contract price for construction. For the
16 purposes of this paragraph, the total contract price for construction does
17 not include the cost of preconstruction services, design services or any
18 other related services or the cost to procure any right-of-way or other cost
19 of condemnation.

20 ~~4. There shall be a separate request for qualifications under~~
21 ~~subsection C of this section for each contract for~~
22 ~~construction-manager-at-risk construction services or job-order-contracting~~
23 ~~construction services.~~

24 4. EACH PROCUREMENT AND EACH REQUEST FOR QUALIFICATIONS PURSUANT TO
25 THIS SECTION IS LIMITED TO A SINGLE CONTRACT FOR CONSTRUCTION-MANAGER-AT-RISK
26 CONSTRUCTION SERVICES, ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES OR
27 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES. THIS RESTRICTION DOES NOT
28 AFFECT OR IMPAIR THE DEPARTMENT'S ABILITY TO PROCURE MULTIPLE CONTRACTS FOR
29 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IN A SINGLE PROCUREMENT USING A
30 SINGLE REQUEST FOR QUALIFICATIONS PURSUANT TO SECTION 28-7367.

31 5. The department shall not procure any construction services using
32 the construction-manager-at-risk construction services, ONE-STEP DESIGN-BUILD
33 CONSTRUCTION SERVICES or job-order-contracting construction services method
34 of project delivery after December 31, 2025. For the purposes of this
35 paragraph, the department procures construction services when the department
36 solicits the contract for construction services. If the department solicits
37 a contract for construction services on or before December 31, 2025, the
38 contract may be executed and construction services under the contract may be
39 rendered in whole or in part after December 31, 2025.

40 J. For job-order-contracting construction services only:

41 1. The maximum dollar amount of an individual job order shall be one
42 million dollars or such higher or lower amount prescribed by the department.
43 Requirements shall not be artificially divided or fragmented in order to
44 constitute a job order that satisfies this requirement.

1 2. If the contractor subcontracts or intends to subcontract any of the
2 work under a job order and if the job-order-construction services contract
3 includes descriptions of standard individual tasks, standard unit prices for
4 standard individual tasks and pricing of job orders based on the number of
5 units of standard individual tasks in the job order:

6 (a) The contractor has a duty to deliver promptly to each
7 subcontractor invited to bid a coefficient to the contractor to do all or
8 part of the work under one or more job orders:

9 (i) A copy of the descriptions of all standard individual tasks on
10 which the subcontractor is invited to bid.

11 (ii) A copy of the standard unit prices for the individual tasks on
12 which the subcontractor is invited to bid.

13 (b) If not previously delivered to the subcontractor, the contractor
14 has a duty to deliver promptly the following to each subcontractor invited to
15 or that has agreed to do any of the work included in any job order:

16 (i) A copy of the description of each standard individual task that is
17 included in the job order and that the subcontractor is invited to perform.

18 (ii) The number of units of each standard individual task that is
19 included in the job order and that the subcontractor is invited to perform.

20 (iii) The standard unit price for each standard individual task that
21 is included in the job order and that the subcontractor is invited to
22 perform.

23 K. Notwithstanding anything to the contrary in this title, the
24 department shall not enter into a contract as contractor to provide
25 construction-manager-at-risk construction services, **ONE-STEP DESIGN-BUILD**
26 **CONSTRUCTION SERVICES** or job-order-contracting construction services.

27 L. Each contract for construction-manager-at-risk construction
28 services, **ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES** or
29 job-order-contracting construction services shall contain a description of
30 each separate location at which the construction will be performed and a
31 requirement that the contractor include in each of the contractor
32 subcontracts the same location description. The contractor shall include in
33 each subcontract a description of each separate location at which the
34 construction will be performed.

35 M. Except as otherwise provided in this section, sections 28-6923 and
36 28-6924, relating to bid, performance and payment bonds, change orders,
37 progress payments, contract retention, definitions and authority to award
38 contracts, apply to department construction-manager-at-risk, **ONE-STEP**
39 **DESIGN-BUILD** and job-order-contracting contracts for transportation
40 facilities pursuant to this article.

41 Sec. 7. Renumber

42 Section 28-7367, Arizona Revised Statutes, is renumbered as section
43 28-7368.

1 Sec. 8. Title 28, chapter 20, article 13, Arizona Revised Statutes, is
2 amended by adding a new section 28-7367, to read:

3 28-7367. Multiple contracts for the same job-order-contracting
4 construction services to be awarded to separate
5 persons or firms in a single procurement; contract
6 requirements

7 A. THE DEPARTMENT MAY PROCURE IN A SINGLE PROCUREMENT MULTIPLE
8 CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE
9 AWARDED TO SEPARATE PERSONS OR FIRMS PURSUANT TO THIS SECTION.

10 B. THE DEPARTMENT SHALL PROVIDE NOTICE OF EACH PROCUREMENT OF MULTIPLE
11 CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE
12 AWARDED TO SEPARATE PERSONS OR FIRMS PRESCRIBED IN THIS SECTION AND SHALL
13 AWARD CONTRACTS ON THE BASIS OF DEMONSTRATED COMPETENCE AND QUALIFICATIONS
14 FOR THE TYPE OF JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES PURSUANT TO THE
15 PROCEDURES PRESCRIBED IN THIS SECTION.

16 C. IN THE PROCUREMENT OF MULTIPLE CONTRACTS FOR THE SAME
17 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
18 OR FIRMS PURSUANT TO THIS SECTION:

19 1. THE DEPARTMENT SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR EACH
20 PROCUREMENT AND PUBLISH NOTICE OF THE REQUEST FOR QUALIFICATIONS IN THE SAME
21 MANNER AS PROVIDED IN SECTION 28-6923. THE REQUEST FOR QUALIFICATIONS SHALL:

22 (a) STATE THAT MULTIPLE CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING
23 CONSTRUCTION SERVICES MAY OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT
24 MAY OR WILL BE AWARDED, THE SERVICES TO BE PERFORMED UNDER EACH OF THE
25 MULTIPLE CONTRACTS AND THAT EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO
26 A SEPARATE PERSON OR FIRM.

27 (b) INCLUDE THE NUMBER OF PERSONS OR FIRMS TO BE INCLUDED ON THE FINAL
28 LIST. THE NUMBER ON THE FINAL LIST SHALL BE THE NUMBER OF CONTRACTS THAT MAY
29 OR WILL BE AWARDED PLUS A NUMBER THAT IS DETERMINED BY THE DEPARTMENT AND
30 THAT IS NOT MORE THAN FIVE.

31 (c) STATE THE CRITERIA TO BE USED BY THE SELECTION TEAM TO SELECT THE
32 PERSONS OR FIRMS TO PERFORM THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.
33 THE REQUEST FOR QUALIFICATIONS SHALL ALSO STATE IN A MANNER DETERMINED BY THE
34 DEPARTMENT THE RELATIVE WEIGHT OF THE SELECTION CRITERIA.

35 (d) IF THE DEPARTMENT WILL HOLD INTERVIEWS AS PART OF THE SELECTION
36 PROCESS, STATE THAT INTERVIEWS SHALL BE HELD WITH A NUMBER OF PERSONS OR
37 FIRMS EQUAL TO THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED PLUS A
38 NUMBER THAT IS DETERMINED BY THE DEPARTMENT AND THAT IS NOT MORE THAN FIVE.

39 2. FOR EACH REQUEST FOR QUALIFICATIONS, THE DEPARTMENT SHALL INITIATE
40 A SELECTION TEAM PURSUANT TO SECTION 28-7365, SUBSECTION B. A PERSON WHO IS
41 A MEMBER OF A SELECTION TEAM SHALL NOT BE A CONTRACTOR UNDER THE CONTRACT OR
42 PROVIDE CONSTRUCTION, CONSTRUCTION SERVICES, MATERIALS OR SERVICES UNDER THE
43 CONTRACT. THE SELECTION TEAM SHALL:

1 (a) EVALUATE THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA
2 THAT ARE SUBMITTED IN RESPONSE TO THE DEPARTMENT'S REQUEST FOR
3 QUALIFICATIONS.

4 (b) IF DETERMINED BY THE DEPARTMENT AND INCLUDED BY THE DEPARTMENT IN
5 THE REQUEST FOR QUALIFICATIONS, CONDUCT INTERVIEWS WITH THE NUMBER OF PERSONS
6 OR FIRMS TO BE INTERVIEWED AS STATED IN THE REQUEST FOR QUALIFICATIONS
7 REGARDING THE CONTRACT AND THE RELATIVE METHODS OF APPROACH FOR FURNISHING
8 THE REQUIRED CONSTRUCTION SERVICES.

9 (c) AFTER ANY INTERVIEWS OR IF INTERVIEWS ARE NOT HELD, IN ORDER OF
10 PREFERENCE, BASED ON THE CRITERIA AND THE WEIGHTING OF CRITERIA ESTABLISHED
11 AND PUBLISHED BY THE DEPARTMENT AND INCLUDED IN THE REQUEST FOR
12 QUALIFICATIONS, SELECT THE FINAL LIST OF PERSONS OR FIRMS THE SELECTION TEAM
13 DEEMS TO BE THE MOST QUALIFIED TO PROVIDE THE CONSTRUCTION SERVICES AND, IN
14 THE CASE OF A CONTRACT THAT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS
15 SECTION, RANK THE PERSONS OR FIRMS ON THE FINAL LIST IN ORDER OF PREFERENCE.
16 THE SELECTION TEAM SHALL BASE THE SELECTION OF THE FINAL LIST AND THE ORDER
17 OF PREFERENCE ONLY ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS. THE NUMBER
18 OF PERSONS OR FIRMS ON THE FINAL LIST SHALL BE THE NUMBER OF PERSONS OR FIRMS
19 SPECIFIED IN THE REQUEST FOR QUALIFICATIONS, EXCEPT THAT:

20 (i) IF A SMALLER NUMBER OF RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS
21 RESPOND TO THE SOLICITATION, THE DEPARTMENT MAY HAVE THE SELECTION TEAM
22 PROCEED WITH THE SELECTION PROCESS, INCLUDING INTERVIEWS AND THE FINAL LIST,
23 WITH THE REMAINING PERSONS OR FIRMS IF AT LEAST TWO PERSONS OR FIRMS REMAIN
24 OR THE DEPARTMENT MAY READVERTISE PURSUANT TO THIS SUBSECTION AS THE
25 DEPARTMENT DEEMS NECESSARY OR APPROPRIATE.

26 (ii) IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS TO
27 A SOLICITATION FOR A CONTRACT TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF
28 THIS SECTION, THE DEPARTMENT MAY PROCEED WITH ONLY ONE PERSON OR FIRM IN THE
29 SELECTION PROCESS AND MAY AWARD THE CONTRACT TO A SINGLE PERSON OR FIRM IF
30 THE DEPARTMENT DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO
31 SUBSECTION E OF THIS SECTION IS FAIR AND REASONABLE AND THAT EITHER OTHER
32 PROSPECTIVE PERSONS OR FIRMS HAD REASONABLE OPPORTUNITY TO RESPOND OR THERE
33 IS NOT ADEQUATE TIME FOR A RESOLICITATION.

34 (iii) IF A PERSON OR FIRM ON THE FINAL LIST WITHDRAWS OR IS REMOVED
35 FROM THE SELECTION PROCESS AND THE SELECTION TEAM DETERMINES THAT IT IS IN
36 THE BEST INTEREST OF THE DEPARTMENT, THE SELECTION TEAM MAY REPLACE THAT
37 PERSON OR FIRM WITH THE PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND THAT
38 IS SELECTED BY THE SELECTION TEAM AS THE NEXT MOST QUALIFIED.

39 (d) BASE THE SELECTION OF THE FINAL LIST AND ORDER OF PREFERENCE ON
40 THE FINAL LIST ONLY ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS.

41 3. THE DEPARTMENT AND THE SELECTION TEAM SHALL NOT REQUEST OR CONSIDER
42 FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN THE
43 SELECTION PROCESS UNDER THIS SUBSECTION OR SUBSECTION D OF THIS SECTION,
44 INCLUDING THE SELECTION OF THE PERSONS OR FIRMS TO BE INTERVIEWED, THE
45 SELECTION OF THE PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN DETERMINING THE

1 ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR FOR ANY OTHER
2 PURPOSE IN THE SELECTION PROCESS.

3 D. THE DEPARTMENT SHALL AWARD THE MULTIPLE CONTRACTS FOR
4 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO THE SEPARATE PERSONS OR FIRMS
5 ON THE FINAL LIST PREPARED PURSUANT TO SUBSECTION C OF THIS SECTION AS
6 PROVIDED IN SUBSECTION E OR F OF THIS SECTION, EXCEPT THAT, IF FEWER THAN THE
7 NUMBER OF PERSONS OR FIRMS ON THE FINAL LIST RESPOND TO THE REQUEST FOR
8 PROPOSALS PURSUANT TO SUBSECTION F OF THIS SECTION BUT AT LEAST TWO PERSONS
9 OR FIRMS ON THE FINAL LIST SUBMIT RESPONSIVE PROPOSALS, OR IF ONE OR MORE OF
10 THE PERSONS OR FIRMS ON THE FINAL LIST DROP OUT OF THE SELECTION PROCESS
11 PURSUANT TO SUBSECTION E OR F OF THIS SECTION:

12 1. IF THERE ARE THREE OR MORE REMAINING PERSONS OR FIRMS, THE
13 DEPARTMENT SHALL PROCEED WITH THE SELECTION PROCESS.

14 2. IF THERE ARE ONLY TWO REMAINING PERSONS OR FIRMS, AS THE DEPARTMENT
15 DEEMS NECESSARY AND APPROPRIATE, THE DEPARTMENT MAY PROCEED WITH THE
16 SELECTION PROCESS WITH THE TWO PERSONS OR FIRMS OR MAY TERMINATE THE
17 SELECTION PROCESS AND MAY READVERTISE PURSUANT TO SUBSECTION C OF THIS
18 SECTION.

19 3. IF THERE IS ONLY ONE REMAINING PERSON OR FIRM, THE DEPARTMENT MAY
20 AWARD ONE OF THE MULTIPLE CONTRACTS TO THE SINGLE PERSON OR FIRM PURSUANT TO
21 SUBSECTION E OF THIS SECTION IF THE DEPARTMENT DETERMINES IN WRITING THAT THE
22 FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS FAIR AND
23 REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD A
24 REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A
25 RESOLICITATION.

26 E. FOR MULTIPLE CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING
27 CONSTRUCTION SERVICES INCLUDED IN THE REQUEST FOR QUALIFICATIONS, THE
28 DEPARTMENT SHALL ENTER INTO NEGOTIATIONS WITH THE NUMBER OF THE HIGHEST
29 QUALIFIED PERSONS OR FIRMS ON THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS
30 THAT MAY OR WILL BE AWARDED. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF
31 COMPENSATION AND OTHER CONTRACT TERMS THAT THE DEPARTMENT DETERMINES TO BE
32 FAIR AND REASONABLE TO THE DEPARTMENT. IN MAKING THIS DECISION, THE
33 DEPARTMENT SHALL TAKE INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE
34 COMPLEXITY AND THE NATURE OF THE CONSTRUCTION SERVICES TO BE RENDERED. IF
35 THE DEPARTMENT IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH A PERSON
36 OR FIRM WITH WHOM THE DEPARTMENT HAS COMMENCED NEGOTIATIONS AT COMPENSATION
37 AND ON OTHER CONTRACT TERMS THE DEPARTMENT DETERMINES TO BE FAIR AND
38 REASONABLE, THE DEPARTMENT SHALL FORMALLY TERMINATE NEGOTIATIONS WITH THAT
39 PERSON OR FIRM. THE DEPARTMENT MAY UNDERTAKE NEGOTIATIONS WITH THE NEXT MOST
40 QUALIFIED PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE DEPARTMENT IS NOT
41 THEN NEGOTIATING AND WITH WHOM THE DEPARTMENT HAS NOT PREVIOUSLY NEGOTIATED
42 IN SEQUENCE UNTIL AN AGREEMENT IS REACHED OR A DETERMINATION IS MADE TO
43 REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST. AS TO EACH CONTRACT FOR
44 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ENTERED INTO PURSUANT TO THIS
45 SUBSECTION, CONSTRUCTION SHALL NOT COMMENCE UNTIL THE DEPARTMENT AND THE

1 CONTRACTOR AGREE IN WRITING ON EITHER A FIXED PRICE THAT THE DEPARTMENT WILL
2 PAY FOR THE CONSTRUCTION TO BE COMMENCED OR A GUARANTEED MAXIMUM PRICE FOR
3 THE CONSTRUCTION TO BE COMMENCED.

4 F. AS AN ALTERNATIVE TO SUBSECTION E OF THIS SECTION, THE DEPARTMENT
5 MAY AWARD MULTIPLE CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION
6 SERVICES AS FOLLOWS:

7 1. THE DEPARTMENT SHALL USE THE SELECTION TEAM THAT IS APPOINTED FOR
8 THE REQUEST FOR QUALIFICATIONS PURSUANT TO SUBSECTION C OF THIS SECTION.

9 2. THE DEPARTMENT SHALL ISSUE A REQUEST FOR PROPOSALS TO THE PERSONS
10 OR FIRMS ON THE FINAL LIST THAT IS DEVELOPED PURSUANT TO SUBSECTION C OF THIS
11 SECTION.

12 3. THE REQUEST FOR PROPOSALS SHALL INCLUDE:

13 (a) THE DEPARTMENT'S PROJECT SCHEDULE AND PROJECT FINAL DESIGN AND
14 CONSTRUCTION BUDGET 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 OFFERORS
17 WHOSE PROPOSALS RECEIVE 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.

21 (d) A REQUIREMENT THAT EACH OFFEROR SEPARATELY SUBMIT A TECHNICAL
22 PROPOSAL AND A PRICE PROPOSAL AND THAT THE OFFEROR'S ENTIRE PROPOSAL BE
23 RESPONSIVE TO THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.

24 (e) A STATEMENT THAT IN APPLYING THE SCORING METHOD THE SELECTION TEAM
25 WILL SEPARATELY EVALUATE THE TECHNICAL PROPOSAL AND THE PRICE PROPOSAL AND
26 WILL EVALUATE AND SCORE THE TECHNICAL PROPOSAL BEFORE OPENING THE PRICE
27 PROPOSAL.

28 (f) IF THE DEPARTMENT CONDUCTS DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF
29 THIS SUBSECTION, A STATEMENT THAT DISCUSSIONS WILL BE HELD AND A REQUIREMENT
30 THAT EACH OFFEROR SUBMIT A PRELIMINARY TECHNICAL PROPOSAL BEFORE THE
31 DISCUSSIONS ARE HELD.

32 4. IF THE DEPARTMENT DETERMINES TO CONDUCT DISCUSSIONS PURSUANT TO
33 PARAGRAPH 5 OF THIS SUBSECTION, EACH OFFEROR SHALL SUBMIT A PRELIMINARY
34 TECHNICAL PROPOSAL TO THE DEPARTMENT BEFORE THOSE DISCUSSIONS ARE HELD.

35 5. IF DETERMINED BY THE DEPARTMENT AND INCLUDED BY THE DEPARTMENT IN
36 THE REQUEST FOR PROPOSALS, THE SELECTION TEAM SHALL CONDUCT DISCUSSIONS WITH
37 ALL OFFERORS THAT SUBMIT PRELIMINARY TECHNICAL PROPOSALS. DISCUSSIONS SHALL
38 BE FOR THE PURPOSE OF CLARIFICATION TO ENSURE FULL UNDERSTANDING OF, AND
39 RESPONSIVENESS TO, THE SOLICITATION REQUIREMENTS. THE DEPARTMENT SHALL
40 ACCORD FAIR TREATMENT TO OFFERORS WITH RESPECT TO ANY OPPORTUNITY FOR
41 DISCUSSION AND FOR CLARIFICATION BY THE OWNER. REVISION OF PRELIMINARY
42 TECHNICAL PROPOSALS SHALL BE PERMITTED AFTER SUBMISSION OF PRELIMINARY
43 TECHNICAL PROPOSALS AND BEFORE THE AWARD FOR THE PURPOSE OF OBTAINING THE
44 BEST AND FINAL PROPOSALS. IN CONDUCTING ANY DISCUSSIONS, INFORMATION DERIVED

1 FROM PROPOSALS SUBMITTED BY COMPETING OFFERORS SHALL NOT BE DISCLOSED TO
2 OTHER COMPETING OFFERORS.

3 6. AFTER COMPLETION OF ANY DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF THIS
4 SUBSECTION OR IF NO DISCUSSIONS ARE HELD, EACH OFFEROR SHALL SEPARATELY
5 SUBMIT THE OFFEROR'S FINAL TECHNICAL PROPOSAL AND THE OFFEROR'S PRICE
6 PROPOSAL.

7 7. BEFORE OPENING ANY PRICE PROPOSAL, THE SELECTION TEAM SHALL OPEN
8 THE FINAL TECHNICAL PROPOSALS, EVALUATE THE FINAL TECHNICAL PROPOSALS AND
9 SCORE THE FINAL TECHNICAL PROPOSALS USING THE SCORING METHOD IN THE REQUEST
10 FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION
11 AND SCORING.

12 8. AFTER COMPLETION OF THE EVALUATION AND SCORING OF ALL FINAL
13 TECHNICAL PROPOSALS, THE SELECTION TEAM SHALL OPEN THE PRICE PROPOSALS,
14 EVALUATE THE PRICE PROPOSALS, SCORE THE PRICE PROPOSALS AND COMPLETE THE
15 SCORING OF THE ENTIRE PROPOSALS USING THE SCORING METHOD IN THE REQUEST FOR
16 PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND
17 SCORING.

18 9. THE DEPARTMENT SHALL AWARD THE MULTIPLE CONTRACTS FOR
19 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO THE RESPONSIVE AND RESPONSIBLE
20 OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST SCORES UNDER THE METHOD OF
21 SCORING IN THE REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE
22 USED IN THE EVALUATION.

23 10. THE CONTRACT FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS
24 MADE.

25 G. UNTIL AN AWARD AND EXECUTION OF ALL OF THE MULTIPLE CONTRACTS BY
26 THE DEPARTMENT, ONLY THE NAME OF EACH PERSON OR FIRM ON THE FINAL LIST
27 DEVELOPED PURSUANT TO SUBSECTION C OF THIS SECTION MAY BE MADE AVAILABLE TO
28 THE PUBLIC. ALL OTHER INFORMATION RECEIVED BY THE DEPARTMENT IN RESPONSE TO
29 THE REQUEST FOR QUALIFICATIONS OR CONTAINED IN THE PROPOSALS IS CONFIDENTIAL
30 IN ORDER TO AVOID DISCLOSURE OF THE CONTENTS THAT MAY BE PREJUDICIAL TO
31 COMPETING OFFERORS DURING THE SELECTION PROCESS. THE DEPARTMENT SHALL OPEN
32 THE PROPOSALS TO PUBLIC INSPECTION AFTER THE CONTRACT IS AWARDED AND THE
33 DEPARTMENT HAS EXECUTED ALL OF THE MULTIPLE CONTRACTS. TO THE EXTENT THAT
34 THE OFFEROR DESIGNATES AND THE DEPARTMENT CONCURS, TRADE SECRETS AND OTHER
35 PROPRIETARY DATA CONTAINED IN A PROPOSAL REMAIN CONFIDENTIAL.

36 H. THE DEPARTMENT MAY CANCEL A REQUEST FOR QUALIFICATIONS OR A REQUEST
37 FOR PROPOSALS OR REJECT IN WHOLE OR IN PART ANY OR ALL PROPOSALS AS SPECIFIED
38 IN THE SOLICITATION IF IT IS IN THE BEST INTEREST OF THE DEPARTMENT. THE
39 DEPARTMENT SHALL MAKE THE REASONS FOR CANCELLATION OR REJECTION PART OF THE
40 CONTRACT FILE.

41 I. NOTWITHSTANDING ANY OTHER LAW:

42 1. THE CONTRACTOR FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IS
43 NOT REQUIRED TO BE REGISTERED TO PERFORM DESIGN SERVICES PURSUANT TO TITLE
44 32, CHAPTER 1 IF THE PERSON OR FIRM ACTUALLY PERFORMING THE DESIGN SERVICES
45 ON BEHALF OF THE CONTRACTOR IS APPROPRIATELY REGISTERED.

1 2. THE CONTRACTOR FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES
2 SHALL BE LICENSED TO PERFORM CONSTRUCTION PURSUANT TO TITLE 32, CHAPTER 10.

3 3. THE DEPARTMENT SHALL NOT PROCURE ANY CONSTRUCTION SERVICES USING
4 THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES METHOD OF PROJECT DELIVERY
5 UNDER THIS SECTION AFTER DECEMBER 31, 2025. FOR THE PURPOSES OF THIS
6 PARAGRAPH, THE DEPARTMENT PROCURES CONSTRUCTION SERVICES IF THE DEPARTMENT
7 SOLICITS THE CONTRACT FOR CONSTRUCTION SERVICES. IF THE DEPARTMENT SOLICITS
8 A CONTRACT FOR CONSTRUCTION SERVICES ON OR BEFORE DECEMBER 31, 2025, THE
9 CONTRACT MAY BE EXECUTED AND CONSTRUCTION SERVICES UNDER THE CONTRACT MAY BE
10 RENDERED IN WHOLE OR IN PART AFTER DECEMBER 31, 2025.

11 J. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ONLY:

12 1. THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER SHALL BE ONE
13 MILLION DOLLARS OR THE HIGHER OR LOWER AMOUNT PRESCRIBED BY THE DEPARTMENT.
14 REQUIREMENTS SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN ORDER TO
15 CONSTITUTE A JOB ORDER THAT SATISFIES THIS REQUIREMENT.

16 2. IF THE CONTRACTOR SUBCONTRACTS OR INTENDS TO SUBCONTRACT ANY OF THE
17 WORK UNDER A JOB ORDER AND IF THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES
18 CONTRACT INCLUDES DESCRIPTIONS OF STANDARD INDIVIDUAL TASKS, STANDARD UNIT
19 PRICES FOR STANDARD INDIVIDUAL TASKS AND PRICING OF JOB ORDERS BASED ON THE
20 NUMBER OF UNITS OF STANDARD INDIVIDUAL TASKS IN THE JOB ORDER:

21 (a) THE CONTRACTOR HAS A DUTY TO DELIVER PROMPTLY TO EACH
22 SUBCONTRACTOR INVITED TO BID A COEFFICIENT TO THE CONTRACTOR TO DO ALL OR
23 PART OF THE WORK UNDER ONE OR MORE JOB ORDERS:

24 (i) A COPY OF THE DESCRIPTIONS OF ALL STANDARD INDIVIDUAL TASKS ON
25 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

26 (ii) A COPY OF THE STANDARD UNIT PRICES FOR THE INDIVIDUAL TASKS ON
27 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

28 (b) IF NOT PREVIOUSLY DELIVERED TO THE SUBCONTRACTOR, THE CONTRACTOR
29 HAS A DUTY TO DELIVER PROMPTLY THE FOLLOWING TO EACH SUBCONTRACTOR INVITED TO
30 OR THAT HAS AGREED TO DO ANY OF THE WORK INCLUDED IN ANY JOB ORDER:

31 (i) A COPY OF THE DESCRIPTION OF EACH STANDARD INDIVIDUAL TASK THAT IS
32 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

33 (ii) THE NUMBER OF UNITS OF EACH STANDARD INDIVIDUAL TASK THAT IS
34 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

35 (iii) THE STANDARD UNIT PRICE FOR EACH STANDARD INDIVIDUAL TASK THAT
36 IS INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO
37 PERFORM.

38 K. EACH CONTRACT FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL
39 CONTAIN A DESCRIPTION OF EACH SEPARATE LOCATION AT WHICH THE CONSTRUCTION
40 WILL BE PERFORMED AND A REQUIREMENT THAT THE CONTRACTOR INCLUDE IN EACH OF
41 THE CONTRACTOR SUBCONTRACTS THE SAME LOCATION DESCRIPTION. THE CONTRACTOR
42 SHALL INCLUDE IN EACH SUBCONTRACT A DESCRIPTION OF EACH SEPARATE LOCATION AT
43 WHICH THE CONSTRUCTION WILL BE PERFORMED.

44 L. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, SECTIONS 28-6923 AND
45 28-6924, RELATING TO BID, PERFORMANCE AND PAYMENT BONDS, CHANGE ORDERS,

1 PROGRESS PAYMENTS, CONTRACT RETENTION, DEFINITIONS AND AUTHORITY TO AWARD
2 CONTRACTS, APPLY TO DEPARTMENT JOB-ORDER-CONTRACTING CONTRACTS FOR
3 TRANSPORTATION FACILITIES PURSUANT TO THIS SECTION.

4 Sec. 9. Section 34-101, Arizona Revised Statutes, is amended to read:

5 34-101. Definitions

6 In this title, unless the context otherwise requires:

7 1. "Agent":

8 (a) Means any county, city or town, or officer, board or commission
9 ~~thereof~~ OF ANY COUNTY, CITY OR TOWN, and irrigation, power, electrical,
10 drainage, flood protection and flood control districts, tax levying public
11 improvement districts, ~~and county or city improvement districts.~~

12 (b) Includes any county board of supervisors and any representative
13 authorized by an agent to act as an agent for the purpose of authorizing
14 necessary change orders to previously awarded contracts in accordance with
15 guidelines established by rule of the agent, including the board of
16 supervisors.

17 2. "Architect services" means those professional architect services
18 that are within the scope of architectural practice as provided in title 32,
19 chapter 1.

20 3. "Construction":

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

24 (b) Does not include the routine operation, routine repair or routine
25 maintenance of existing facilities, structures, buildings or real property ~~or~~
26 ~~demolition projects costing less than two hundred thousand dollars.~~

27 4. "Construction-manager-at-risk" means a project delivery method in
28 which:

29 (a) There is a separate contract for design services and a separate
30 contract for construction services, **EXCEPT THAT INSTEAD OF A SINGLE CONTRACT**
31 **FOR CONSTRUCTION SERVICES, THE AGENT MAY ELECT SEPARATE CONTRACTS FOR**
32 **PRECONSTRUCTION SERVICES DURING THE DESIGN PHASE, FOR CONSTRUCTION DURING THE**
33 **CONSTRUCTION PHASE AND FOR ANY OTHER CONSTRUCTION SERVICES.**

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

36 (c) Design and construction of the project may be in sequential phases
37 or concurrent phases.

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

40 5. "Construction services" means either of the following for
41 construction-manager-at-risk, design-build and job-order-contracting project
42 delivery methods:

43 (a) Construction, excluding services, through the
44 construction-manager-at-risk or job-order-contracting project delivery
45 methods.

1 (b) A combination of construction and, as elected by the agent, one or
2 more related services, such as finance services, maintenance services,
3 operations services, design services and preconstruction services, as those
4 services are authorized in the definitions of construction-manager-at-risk,
5 design-build or job-order-contracting in this section.

6 6. "Contract" means all types of agent agreements, regardless of what
7 they are called, for the procurement of services pursuant to this title.

8 7. "Contractor" means any person who has a contract with an agent.

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

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

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

12 (c) The second contract is for construction.

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

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

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

17 (a) There is a single contract for design services and construction
18 services, EXCEPT THAT INSTEAD OF A SINGLE CONTRACT FOR DESIGN SERVICES AND
19 CONSTRUCTION SERVICES, THE AGENT MAY ELECT SEPARATE CONTRACTS FOR
20 PRECONSTRUCTION SERVICES AND DESIGN SERVICES DURING THE DESIGN PHASE, FOR
21 CONSTRUCTION AND DESIGN SERVICES DURING THE CONSTRUCTION PHASE AND FOR ANY
22 OTHER CONSTRUCTION SERVICES.

23 (b) Design and construction of the project may be in sequential phases
24 or concurrent phases.

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

27 10. "Design requirements":

28 (a) Means at a minimum the agent's written description of the project
29 or service to be procured, including:

30 (i) The required features, functions, characteristics, qualities and
31 properties.

32 (ii) The anticipated schedule, including start, duration and
33 completion.

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

36 (b) May include:

37 (i) Drawings and other documents illustrating the scale and
38 relationship of the features, functions and characteristics of the project,
39 which shall all be prepared by an architect or engineer, as appropriate, who
40 is registered pursuant to section 32-121.

41 (ii) Additional design information or documents that the agent elects
42 to include.

43 11. "Design services" means architect services, engineer services or
44 landscape architect services.

1 12. "Direct selection" means the selection of a technical registrant
2 without the requirement of advertising or the use of a current register.

3 13. "Engineer services" means those professional engineer services that
4 are within the scope of engineering practice as provided in title 32,
5 chapter 1.

6 14. "Finance services" means financing for a construction services
7 project.

8 15. "Horizontal construction" means CONSTRUCTION OF highways, roads,
9 streets, bridges, canals, floodways, earthen dams, ~~and~~ landfills, LIGHT RAIL
10 AND AIRPORT RUNWAYS, TAXIWAYS AND APRONS. FOR THE PURPOSES OF THIS
11 PARAGRAPH, LIGHT RAIL DOES NOT INCLUDE ANY RELATED RAIL STATIONS, MAINTENANCE
12 FACILITIES OR PARKING FACILITIES.

13 16. "Job-order-contracting" means a project delivery method in which:
14 (a) The contract is a requirements contract for indefinite quantities
15 of construction.

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

18 (c) Finance services, maintenance services, operations services,
19 preconstruction services, design services and other related services may be
20 included.

21 17. "Landscape architect services" means those professional landscape
22 architect services that are within the scope of landscape architectural
23 practice as provided in title 32, chapter 1.

24 18. "Maintenance services" means routine maintenance, repair and
25 replacement of existing facilities, structures, buildings or real property.

26 19. "Materials":

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

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

31 20. "Operations services" means routine operation of existing
32 facilities, structures, buildings or real property.

33 21. "Person" means any corporation, business, individual, union,
34 committee, club, other organization or group of individuals.

35 22. "Preconstruction services" means ~~advice~~ SERVICES AND OTHER
36 ACTIVITIES during the design phase.

37 23. "Procurement":

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

40 (b) Includes all functions that pertain to obtaining any ~~material~~
41 MATERIALS, services, construction or construction services, including
42 description of requirements, selection and solicitation of sources,
43 preparation and award of contract and all phases of contract administration.

1 24. "Public competition" means a competitive procurement process
2 pursuant to section 34-103, subsection G that includes advertising in a
3 public newspaper and a qualification-based selection process.

4 25. "Services":

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

8 (b) Does not include employment agreements or collective bargaining
9 agreements.

10 ~~26. "Specific single project" means one or more facilities at a single~~
11 ~~location, at a common location or, if for a similar purpose, at multiple~~
12 ~~locations.~~

13 ~~27.~~ 26. "Subcontractor" means a person who contracts to perform work
14 or render service to a contractor or to another subcontractor as a part of a
15 contract with an agent.

16 ~~28.~~ 27. "Technical registrant" means a person who provides any of the
17 professional services listed in title 32, chapter 1.

18 Sec. 10. Section 34-102, Arizona Revised Statutes, is amended to read:

19 ~~34-102.~~ Multiple contracts; professional services

20 A. For professional services that are provided by a technical
21 registrant, an agent may procure and award multiple contracts from a single
22 solicitation under section 34-103 or ~~34-603~~ CHAPTER 6 OF THIS TITLE, as
23 applicable, except that professional services that are part of design-build
24 construction services may not be procured under this subsection. Each of the
25 multiple contracts for professional services ~~THAT ARE PROCURED IN A~~
26 ~~PROCUREMENT~~ must have a term not exceeding five years ~~AFTER THE DATE OF THE~~
27 ~~CONTRACT AWARD OF THE FIRST CONTRACT UNDER THE PROCUREMENT~~ and may continue
28 in effect after the five year term for professional services on projects
29 commenced within the five year term.

30 B. In a solicitation for multiple contracts for professional services
31 by technical registrants, ~~←~~

32 ~~1. Any publication shall include the fact that multiple contracts may~~
33 ~~or will be awarded, shall state the number of contracts that may or will be~~
34 ~~awarded and shall describe the services to be performed under each contract.~~
35 ~~If the solicitation is under section 34-603, subsection C, the request for~~
36 ~~qualifications shall also contain this information.~~

37 ~~2. There shall be a single selection process for all of the multiple~~
38 ~~contracts, except that if the solicitation is under section 34-103,~~
39 ~~subsections E and F or under section 34-603, subsection C there shall be a~~
40 ~~separate final list for each contract and a separate contract negotiation for~~
41 ~~each contract. However, if the solicitation specifies that all of the~~
42 ~~multiple contracts will be awarded to a single contractor, there may be a~~
43 ~~single final list and a single negotiation for all of the multiple contracts.~~

44 ~~3.~~ the agent may award all of the multiple contracts to one contractor
45 or may award the multiple contracts to multiple contractors.

1 C. ~~Except for construction manager at risk construction services for~~
2 ~~horizontal construction and design build construction services for horizontal~~
3 ~~construction,~~ Multiple contracts for ~~construction manager at risk~~
4 ~~construction services, design build construction services or~~ THE SAME
5 job-order-contracting construction services TO BE AWARDED TO SEPARATE PERSONS
6 OR FIRMS may be procured in a single solicitation as provided in section
7 ~~34-603, subsection C~~ 34-604.

8 Sec. 11. Section 34-103, Arizona Revised Statutes, is amended to read:

9 ~~34-103.~~ Employment of technical registrants for work on public
10 buildings and structures; direct selection; final
11 list selection; public competition

12 A. An agent shall procure professional services from a technical
13 registrant in the manner prescribed in chapter 6 of this title if either of
14 the following applies:

15 1. The contract is with a technical registrant other than an architect
16 and is for an amount of more than five hundred thousand dollars.

17 2. The contract is with an architect and is for an amount of more than
18 two hundred fifty thousand dollars.

19 B. An agent may procure professional services from a technical
20 registrant in the manner prescribed in chapter 6 of this title or as
21 prescribed in subsection D if either of the following applies:

22 1. The contract is with a technical registrant other than an architect
23 and is for an amount of five hundred thousand dollars or less.

24 2. The contract is with an architect and is for an amount of two
25 hundred fifty thousand dollars or less.

26 C. If authority is given by law to an agent to construct a building or
27 structure, or additions to or alterations of existing buildings, an agent
28 shall employ an architect or engineer, or both, as warranted by the type of
29 construction, if the agent deems the work to be of a nature that requires
30 such employment.

31 D. An agent may employ a technical registrant by direct selection, by
32 public competition pursuant to subsection G or pursuant to subsections E and
33 F if either of the following applies:

34 1. The contract is with a technical registrant other than an architect
35 and is for an amount of five hundred thousand dollars or less.

36 2. The contract is with an architect and is for an amount of two
37 hundred fifty thousand dollars or less.

38 E. The agent may elect to employ a technical registrant OR TECHNICAL
39 REGISTRANTS by encouraging persons or firms engaged in the lawful practice of
40 the profession to submit annually a statement of qualifications and
41 experience. If the agent elects to employ a technical registrant OR
42 TECHNICAL REGISTRANTS by this method, the agent shall initiate an
43 appropriately qualified selection committee for each procurement, which may
44 include one CONTRACT or ~~more~~ MULTIPLE contracts, in accordance with rules
45 adopted by the agent. THE AMOUNT OF EACH CONTRACT IN A SINGLE PROCUREMENT

1 UNDER THIS SUBSECTION AND SUBSECTION F SHALL NOT EXCEED THE DOLLAR AMOUNT
2 LIMITS IN SUBSECTIONS B AND D. The selection committee shall evaluate
3 current statements of qualifications and experience on file with the agent
4 together with those that may be submitted by other persons or firms regarding
5 the procurement. If possible and practicable, the selection committee shall
6 conduct interviews ~~with at least three persons or firms~~ regarding the
7 procurement and the relative methods of furnishing the required services and,
8 if possible, shall select, in order of preference and based on criteria
9 established and published by the selection committee, ~~a separate final list~~
10 ~~for each contract being procured of at least three~~ ONE OR MORE FINAL LISTS of
11 the persons or firms deemed to be the most qualified to provide the services
12 required. The selection committee shall base the selection of each final
13 list and the order of preference on each final list on demonstrated
14 competence and qualifications only. The agent and the selection committee
15 shall not request or consider fees, price, man-hours or any other cost
16 information at any point in the selection process under this subsection,
17 including the selection of the persons or firms to be interviewed, the
18 selection of the persons and firms to be on a final list, in determining the
19 order of preference of persons and firms on a final list or for any other
20 purpose in the selection process. IF THE PROCUREMENT IS FOR:

21 1. A SINGLE CONTRACT OR IF THE PROCUREMENT IS FOR MULTIPLE CONTRACTS
22 TO BE AWARDED TO A SINGLE PERSON OR FIRM, THERE SHALL BE ONE FINAL LIST OF AT
23 LEAST THREE BUT NO MORE THAN FIVE PERSONS OR FIRMS.

24 2. MULTIPLE CONTRACTS FOR DIFFERENT TECHNICAL REGISTRANT SERVICES TO
25 BE AWARDED TO SEPARATE PERSONS OR FIRMS, THERE SHALL BE A SEPARATE FINAL LIST
26 FOR EACH TYPE OF TECHNICAL REGISTRANT SERVICES AND THE NUMBER OF PERSONS OR
27 FIRMS ON EACH FINAL LIST SHALL BE THE NUMBER OF CONTRACTS FOR EACH TYPE OF
28 TECHNICAL REGISTRANT SERVICE PLUS ANOTHER NUMBER THAT IS DETERMINED BY THE
29 AGENT AND THAT IS NOT MORE THAN FIVE.

30 3. MULTIPLE CONTRACTS FOR SIMILAR TECHNICAL REGISTRANT SERVICES TO BE
31 AWARDED TO SEPARATE PERSONS OR FIRMS, THERE SHALL BE ONE FINAL LIST AND THE
32 NUMBER OF PERSONS OR FIRMS ON THE FINAL LIST SHALL BE THE NUMBER OF CONTRACTS
33 PLUS ANOTHER NUMBER THAT IS DETERMINED BY THE AGENT AND THAT IS NOT MORE THAN
34 FIVE.

35 F. After ~~a~~ EACH final list is selected ~~for each contract included in~~
36 ~~the procurement~~ PURSUANT TO SUBSECTION E, the agent shall enter into ~~separate~~
37 negotiations ~~for a contract~~ with the highest qualified person or firm on ~~the~~
38 EACH final list ~~for the contract determined under subsection E for the~~
39 ~~professional services~~ OR, IN THE CASE OF A FINAL LIST FOR MULTIPLE CONTRACTS
40 TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THE AGENT SHALL ENTER INTO
41 NEGOTIATIONS WITH A NUMBER OF THE HIGHEST QUALIFIED PERSONS OR FIRMS ON A
42 FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED. The
43 negotiations shall include consideration of compensation and other contract
44 terms that the agent determines to be fair and reasonable to the agent. In
45 making this determination, the agent shall take into account the estimated

1 value, the scope, the complexity and the nature of the professional services
2 to be rendered. If the agent is not able to negotiate a satisfactory
3 contract with ~~the highest qualified person or firm on the final list for the~~
4 ~~contract at a~~ A PERSON OR FIRM WITH WHICH THE AGENT IS NEGOTIATING AT A price
5 and on other contract terms the agent determines to be fair and reasonable,
6 the agent shall formally terminate negotiations with that person or firm.
7 The agent may enter into negotiations with the next most qualified person or
8 firm on the final list ~~for the contract~~ in sequence until an agreement is
9 reached or a determination is made to reject all persons or firms on the
10 final list ~~for the contract~~. IF THE AGENT TERMINATES NEGOTIATIONS WITH A
11 PERSON OR FIRM ON A FINAL LIST AND COMMENCES NEGOTIATIONS WITH ANOTHER PERSON
12 OR FIRM ON A FINAL LIST, THE AGENT SHALL NOT IN THAT PROCUREMENT RECOMMENCE
13 NEGOTIATIONS OR ENTER INTO THE SINGLE CONTRACT OR MULTIPLE CONTRACTS FOR THE
14 TECHNICAL REGISTRANT SERVICES COVERED BY THAT FINAL LIST WITH ANY PERSON OR
15 FIRM ON THAT FINAL LIST WITH WHOM THE AGENT HAS TERMINATED NEGOTIATIONS.

16 G. If competitive designs are solicited, the agent shall publish
17 notice of the competition at least thirty days before the date set for
18 closing the competition. The notice shall include the following:

- 19 1. The project title and description.
- 20 2. The design and construction budget.
- 21 3. The competitive process and criteria to be used to select the
22 winning offeror.
- 23 4. The amount of the stipend to be paid to the unsuccessful offerors.
- 24 5. The offerors' response date.
- 25 6. The person to contact to obtain additional information regarding
26 the competition.
- 27 7. Any other requirements established by the agent as appropriate.

28 Sec. 12. Section 34-602, Arizona Revised Statutes, is amended to read:
29 34-602. Project delivery methods for design and construction
30 services

31 A. NOTWITHSTANDING TITLE 48 OR ANY OTHER LAW, an agent may procure
32 design services, construction and construction services, as applicable, under
33 any of the following project delivery methods:

- 34 1. Design-bid-build.
- 35 2. Construction-manager-at-risk.
- 36 3. Design-build.
- 37 4. Job-order-contracting.

38 B. Except as provided in section 41-2501, subsection C and section
39 41-2535, subsection D, for the design-bid-build project delivery method, the
40 agent shall procure:

- 41 1. Design services as provided in this chapter and chapter 1, article
42 1 of this title.
- 43 2. Construction by competitive sealed bidding pursuant to chapter 2,
44 articles 1, 2 and 3 of this title and pursuant to rules adopted by the agent
45 pursuant to section 41-2501, subsection C.

1 C. An agent shall procure construction services under the
2 construction-manager-at-risk, design-build and job-order-contracting project
3 delivery methods pursuant to this chapter.

4 D. An agent shall procure design services relating to
5 construction-manager-at-risk construction services projects pursuant to
6 section 34-103, ~~or~~ 34-603, 34-604 OR 34-606, as applicable.

7 E. For job-order-contracting construction services projects, if the
8 agent does not include design services in the job-order-contracting
9 construction services contract, the agent shall procure any design services
10 relating to the job-order-contracting construction services projects under
11 the contract pursuant to section 34-103, ~~or~~ 34-603, 34-604 OR 34-606, as
12 applicable.

13 Sec. 13. Section 34-603, Arizona Revised Statutes, is amended to read:

14 34-603. Procurement of single contracts for professional
15 services and construction-manager-at-risk,
16 design-build and job-order-contracting construction
17 services; definition

18 A. Except for services THAT ARE UNDER A SINGLE CONTRACT AND THAT an
19 agent procures pursuant to section 34-103 or ~~34-604~~ 34-606, an agent shall
20 procure A SINGLE CONTRACT FOR the following services pursuant to this
21 section:

- 22 1. Architect services.
- 23 2. Construction-manager-at-risk construction services.
- 24 3. Design-build construction services.
- 25 4. Engineer services.
- 26 5. Job-order-contracting construction services.
- 27 6. Landscape architect services.
- 28 7. Assayer services.
- 29 8. Geologist services.
- 30 9. Land surveying services.

31 B. An agent shall provide notice of each procurement of A SINGLE
32 CONTRACT FOR professional services or construction services specified in this
33 section and shall award ~~contracts~~ THE SINGLE CONTRACT on the basis of
34 demonstrated competence and qualifications for the type of professional
35 services or construction services pursuant to the procedures prescribed in
36 this section.

37 C. In ~~the~~ A procurement of A SINGLE CONTRACT FOR professional services
38 or construction services pursuant to this section:

39 1. THE FOLLOWING REQUIREMENTS APPLY:

40 (a) THE AGENT AND THE SELECTION COMMITTEE SHALL NOT REQUEST OR
41 CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN
42 THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION D OF THIS
43 SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE INTERVIEWED, THE
44 SELECTION OF PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN DETERMINING THE

1 ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR FOR ANY OTHER
2 PURPOSE IN THE SELECTION PROCESS.

3 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
4 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON THE FINAL LIST
5 AND THEIR ORDER ON THE FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND
6 SHALL CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE
7 AGENT FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER FACTORS OR
8 CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER ACTIONS.

9 (c) AN AGENT IS LIMITED TO ONE CONTRACT IN EACH PROCUREMENT UNDER THIS
10 SECTION. ALTERNATIVELY:

11 (i) FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, AN AGENT
12 MAY ELECT SEPARATE CONTRACTS FOR PRECONSTRUCTION SERVICES DURING THE DESIGN
13 PHASE, FOR CONSTRUCTION DURING THE CONSTRUCTION PHASE AND FOR ANY OTHER
14 CONSTRUCTION SERVICES.

15 (ii) FOR DESIGN-BUILD CONSTRUCTION SERVICES, AN AGENT MAY ELECT
16 SEPARATE CONTRACTS FOR PRECONSTRUCTION SERVICES AND DESIGN SERVICES DURING
17 THE DESIGN PHASE, FOR CONSTRUCTION AND DESIGN SERVICES DURING THE
18 CONSTRUCTION PHASE AND FOR ANY OTHER CONSTRUCTION SERVICES.

19 (iii) FOR PROFESSIONAL SERVICES, AN AGENT MAY ENTER INTO MULTIPLE
20 CONTRACTS FOR DIFFERENT PHASES OF A SINGLE PROJECT.

21 (d) ALL CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR
22 DESIGN-BUILD CONSTRUCTION SERVICES INCLUDED IN A PROCUREMENT UNDER THIS
23 SECTION SHALL BE LIMITED TO CONSTRUCTION SERVICES TO BE PERFORMED AT A SINGLE
24 LOCATION, A COMMON LOCATION OR, IF THE CONSTRUCTION SERVICES ARE ALL FOR A
25 SIMILAR PURPOSE, MULTIPLE LOCATIONS. FOR CONSTRUCTION-MANAGER-AT-RISK
26 CONSTRUCTION SERVICES AND DESIGN-BUILD CONSTRUCTION SERVICES TO BE PERFORMED
27 AT MULTIPLE LOCATIONS:

28 (i) AT THE TIME THE REQUEST FOR QUALIFICATIONS IS ISSUED, THE AGENT
29 MUST INTEND TO COMMENCE ALL CONSTRUCTION SERVICES AT EACH LOCATION WITHIN
30 THIRTY MONTHS AFTER EXECUTION OF THE FIRST CONTRACT FOR PRECONSTRUCTION
31 SERVICES OR OTHER CONSTRUCTION SERVICES AT ANY OF THE LOCATIONS.

32 (ii) THE REQUEST FOR QUALIFICATIONS MUST INCLUDE THE INFORMATION
33 DESCRIBED IN PARAGRAPH 2, SUBDIVISION (G) OF THIS SUBSECTION.

34 (e) IF THE AGENT ENTERS INTO THE FIRST CONTRACT FOR PRECONSTRUCTION
35 SERVICES, CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES AS THE RESULT OF THE
36 PROCUREMENT, THE PROCUREMENT UNDER THIS SECTION ENDS. AFTER EXECUTION OF
37 THAT FIRST CONTRACT THE AGENT MAY NOT USE THE PROCUREMENT OR THE EXISTING
38 FINAL LIST IN THE PROCUREMENT AS THE BASIS FOR ENTERING INTO A CONTRACT WITH
39 ANY OTHER PERSON OR FIRM THAT PARTICIPATED IN THE PROCUREMENT.

40 (f) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
41 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
42 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

43 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
44 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT
45 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE

1 PROCUREMENT, THE AGENT MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
2 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING
3 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE AGENT MAY
4 ELECT TO TERMINATE THE PROCUREMENT.

5 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
6 CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS
7 SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS
8 TO THE REQUEST FOR QUALIFICATIONS OR, IF ONE OR MORE PERSONS OR FIRMS DROP
9 OUT OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR
10 FIRM REMAINS IN THE PROCUREMENT, THE AGENT MAY ELECT TO PROCEED WITH THE
11 PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE AGENT DETERMINES IN WRITING
12 THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS FAIR AND
13 REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD REASONABLE
14 OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A 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 AGENT, 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 ~~1.~~ 2. An agent shall issue a request for qualifications for each
22 ~~contract~~ PROCUREMENT and publish notice of the request for qualifications.
23 This notice shall be published by advertising in a newspaper of general
24 circulation in the county in which the agent is located for two consecutive
25 publications if it is a weekly newspaper or for two publications that are at
26 least six but no more than ten days apart if it is a daily newspaper. The
27 request for qualifications shall:

28 ~~(a) Include the number of persons or firms to be included on the final~~
29 ~~list. In a request for qualifications for a horizontal construction project,~~
30 ~~at least three but not more than five persons or firms shall be on the final~~
31 ~~list. In all other requests for qualifications, three persons or firms shall~~
32 ~~be on the final list.~~

33 ~~(b) State the criteria to be used by the selection committee to select~~
34 ~~the person or firm to perform the professional services or the construction~~
35 ~~services. The request for qualifications shall also state in a manner~~
36 ~~determined by the agent the relative weight of the selection criteria and, if~~
37 ~~required under paragraph 7, subdivision (b) of this subsection, that one of~~
38 ~~the criteria will be the person's or firm's subcontractor selection plan or~~
39 ~~procedures to implement the agent's subcontractor selection plan.~~

40 (a) STATE THAT ONE CONTRACT MAY OR WILL BE AWARDED, DESCRIBE THE
41 SERVICES TO BE PERFORMED UNDER THE CONTRACT AND STATE THAT ONE PERSON OR FIRM
42 MAY OR WILL BE AWARDED THE CONTRACT.

43 (b) IN A PROCUREMENT OF A CONTRACT TO BE NEGOTIATED UNDER SUBSECTION E
44 OF THIS SECTION, STATE THAT THERE WILL BE A SINGLE FINAL LIST OF AT LEAST
45 THREE AND NOT MORE THAN FIVE PERSONS OR FIRMS. IN A PROCUREMENT IN WHICH THE

1 CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS SECTION, STATE THAT THERE
2 WILL BE A SINGLE FINAL LIST AND THAT THE NUMBER OF PERSONS OR FIRMS ON THE
3 FINAL LIST WILL BE THREE.

4 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
5 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
6 EXCEPT THAT FOR CONSTRUCTION SERVICES ONE OF THE CRITERIA SHALL BE THE
7 PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR PROCEDURES TO IMPLEMENT
8 THE AGENT'S SUBCONTRACTOR SELECTION PLAN. ALL SELECTION CRITERIA UNDER THIS
9 SUBSECTION SHALL BE FACTORS THAT DEMONSTRATE COMPETENCE AND QUALIFICATIONS
10 FOR THE TYPE OF PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES INCLUDED IN
11 THE PROCUREMENT. IF:

12 (i) INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
13 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
14 BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND THE REQUEST
15 FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
16 THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON THE
17 FINAL LIST AND IN DETERMINING THEIR ORDER ON THE FINAL LIST. THE FINAL LIST
18 SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE SELECTION
19 CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR FIRMS TO BE
20 INTERVIEWED. THE REQUEST FOR QUALIFICATIONS SHALL ALSO STATE WHETHER THE
21 AGENT WILL SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND THEIR ORDER ON
22 THE FINAL LIST SOLELY THROUGH THE RESULTS OF THE INTERVIEW PROCESS OR THROUGH
23 THE COMBINED RESULTS OF BOTH THE INTERVIEW PROCESS AND THE EVALUATION OF
24 STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA SUBMITTED IN RESPONSE TO
25 THE AGENT'S REQUEST FOR QUALIFICATIONS.

26 (ii) INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
27 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
28 BE USED IN SELECTING THE PERSONS OR FIRMS ON THE FINAL LIST AND IN
29 DETERMINING THEIR ORDER ON THE FINAL LIST.

30 ~~(e)~~ (d) If the agent will hold interviews as part of the selection
31 process, state that interviews ~~shall~~ WILL be held AND THAT THE INTERVIEWS
32 WILL BE with at least three ~~and no~~ BUT NOT more than five persons or firms.
33 ~~, except that if multiple contracts are being procured under a single request~~
34 ~~for qualifications solicitation under this subsection or a single request for~~
35 ~~qualifications and request for proposals solicitation under this subsection~~
36 ~~and subsection F of this section, the number to be interviewed shall be at~~
37 ~~least three and not more than the number of contracts plus two.~~

38 (e) FOR PROCUREMENTS OF CONSTRUCTION SERVICES, INCLUDE EITHER:

39 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
40 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
41 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
42 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
43 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

44 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE AGENT THAT APPLIES
45 TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE CONSTRUCTION SERVICES

1 AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED ON QUALIFICATIONS ALONE
2 OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND NOT BASED ON PRICE ALONE
3 AND A REQUIREMENT THAT EACH PERSON OR FIRM MUST SUBMIT A DESCRIPTION OF THE
4 PROCEDURES IT PROPOSES TO USE TO IMPLEMENT THE AGENT'S SUBCONTRACTOR
5 SELECTION PLAN.

6 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
7 AGENT'S PROTEST POLICY AND PROCEDURES OR, IF THE AGENT DOES NOT HAVE A
8 PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE PROTEST POLICY AND
9 PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION APPLY TO ANY PROTESTS
10 IN CONNECTION WITH THE PROCUREMENT.

11 (g) IN A PROCUREMENT OF CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
12 SERVICES OR DESIGN-BUILD CONSTRUCTION SERVICES TO BE PERFORMED AT MULTIPLE
13 LOCATIONS, INCLUDE:

14 (i) A BRIEF DESCRIPTION OF THE CONSTRUCTION SERVICES TO BE PERFORMED
15 AT EACH LOCATION.

16 (ii) THE ESTIMATED BUDGET FOR THE CONSTRUCTION SERVICES TO BE
17 PERFORMED AT EACH LOCATION.

18 (iii) A SCHEDULE FOR THE CONSTRUCTION SERVICES TO BE PERFORMED AT EACH
19 LOCATION THAT SHOWS THE AGENT'S INTENT TO COMMENCE ALL CONSTRUCTION SERVICES
20 AT EACH LOCATION WITHIN THIRTY MONTHS AFTER EXECUTION OF THE FIRST CONTRACT
21 FOR PRECONSTRUCTION SERVICES OR OTHER CONSTRUCTION SERVICES AT ANY OF THE
22 LOCATIONS.

23 ~~2-~~ 3. An agent shall initiate an appropriately qualified selection
24 committee for each request for qualifications. THE AGENT SHALL ENSURE THAT
25 THE SELECTION COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION
26 COMMITTEE. EACH SELECTION COMMITTEE MUST INCLUDE ONE EMPLOYEE OF THE AGENT
27 OR AN AGENT REPRESENTATIVE WHO IS APPOINTED BY THE AGENT. If the agent is
28 procuring professional services, the agent shall determine the number and
29 qualifications of the selection committee members. A selection committee for
30 the procurement of construction services shall not have more than seven
31 members, except that, if the contract involves the agent and additional
32 governmental or private participants, the number of members of the selection
33 committee shall be increased by one for each additional participant, except
34 that the maximum number of members of the selection committee is nine. The
35 selection committee for construction services shall include at least one
36 person who is a senior management employee of a licensed contractor and one
37 person who is an architect or an engineer who is registered pursuant to
38 section 32-121. These members may be employees of the agent or outside
39 consultants. Outside contractors, architects and engineers serving on a
40 selection committee shall not receive compensation from the agent for
41 performing this service, but the agent may elect to reimburse outside
42 contractors, architects and engineers for travel, lodging and other expenses
43 incurred in connection with service on a selection committee. A person who
44 is a member of a selection committee shall not be a contractor under a
45 contract awarded under the procurement or provide ANY PROFESSIONAL SERVICES,

1 construction, construction services, materials or OTHER services under the
2 contract. The selection committee AND THE AGENT shall DO THE FOLLOWING:

3 ~~(a) Evaluate the statements of qualifications and performance data~~
4 ~~that are submitted in response to the agent's request for qualifications.~~

5 ~~(b) (a) If determined by the agent and included by the agent in the~~
6 ~~request for qualifications, IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR~~
7 ~~QUALIFICATIONS:~~

8 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSONS OR FIRMS TO BE
9 INTERVIEWED BY EVALUATING THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE
10 DATA THAT ARE SUBMITTED IN RESPONSE TO THE AGENT'S REQUEST FOR QUALIFICATIONS
11 BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
12 CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO DETERMINE THE
13 PERSONS OR FIRMS TO BE INTERVIEWED.

14 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
15 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
16 ON THE FINAL LIST AND TO DETERMINE THEIR ORDER ON THE FINAL LIST ARE NOT
17 INCLUDED IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD
18 THE AGENT SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE INTERVIEWED THE
19 SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO BE USED
20 TO SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND TO DETERMINE THEIR ORDER
21 ON THE FINAL LIST. THESE SELECTION CRITERIA AND RELATIVE WEIGHT MAY BE
22 DIFFERENT THAN THE SELECTION CRITERIA AND RELATIVE WEIGHT USED TO DETERMINE
23 THE PERSONS OR FIRMS TO BE INTERVIEWED.

24 (iii) THE SELECTION COMMITTEE SHALL conduct interviews with the number
25 of persons or firms to be interviewed as stated in the request for
26 qualifications regarding the professional services or construction services
27 and the relative methods of approach for furnishing the required professional
28 services or construction services.

29 ~~(c) (b) After any interviews, in order of preference, based on the~~
30 ~~criteria and the weighting of criteria included in the request for~~
31 ~~qualifications, select a final list for each contract of persons or firms the~~
32 ~~selection committee deems to be the most qualified to provide the~~
33 ~~professional services or construction services~~ BASED ONLY ON THE SELECTION
34 CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA SPECIFIED AS PROVIDED
35 IN THIS SUBSECTION FOR SELECTION OF THE PERSONS OR FIRMS ON THE FINAL LIST
36 AND THEIR ORDER ON THE FINAL LIST, THE SELECTION COMMITTEE SHALL SELECT THE
37 PERSONS OR FIRMS FOR THE FINAL LIST and, in the case of A FINAL LIST FOR a
38 contract that will be negotiated under subsection E of this section, rank the
39 persons or firms on the final list in order of preference. ~~The selection~~
40 ~~committee shall base the selection of the final list and the order of~~
41 ~~preference on demonstrated competence and qualifications only. If the~~
42 ~~request for qualifications solicited multiple contracts, the selection~~
43 ~~committee shall select a separate final list for each contract, except that~~
44 ~~if multiple contracts are being procured and if the request for~~
45 ~~qualifications specified that all of the multiple contracts will be awarded~~

1 ~~to a single contractor, the selection committee may select a single final~~
2 ~~list for all of the multiple contracts. The number of persons or firms on~~
3 ~~the final list shall be the number of persons or firms specified in the~~
4 ~~request for qualifications, except that:~~

5 ~~(i) If a smaller number of responsive and responsible persons or firms~~
6 ~~respond to the solicitation, the agent may elect to have the selection~~
7 ~~committee proceed with the selection process, including interviews and the~~
8 ~~final list, with the remaining persons or firms if at least two persons or~~
9 ~~firms remain or the agent may readvertise pursuant to this subsection as the~~
10 ~~agent deems necessary or appropriate.~~

11 ~~(ii) If only one responsive and responsible person or firm responds to~~
12 ~~a solicitation for a contract or multiple contracts to be negotiated pursuant~~
13 ~~to subsection E of this section, the agent may elect to proceed with only one~~
14 ~~person or firm in the selection process and may award the contract or~~
15 ~~contracts to a single person or firm if the agent determines in writing that~~
16 ~~the fee negotiated pursuant to subsection E of this section is fair and~~
17 ~~reasonable and that either other prospective persons or firms had reasonable~~
18 ~~opportunity to respond or there is not adequate time for a resolicitation.~~

19 ~~(iii) If a person or firm on the final list withdraws or is removed~~
20 ~~from the selection process and the selection committee determines that it is~~
21 ~~in the best interest of the agent, the selection committee may replace that~~
22 ~~person or firm with another person or firm that submitted qualifications and~~
23 ~~that is selected by the selection committee as the next most qualified.~~

24 ~~(d) Base the selection of the final list and order of preference on~~
25 ~~the final list on demonstrated competence and qualifications only.~~

26 ~~3. Except for construction manager at risk construction services for~~
27 ~~horizontal construction and design build construction services for horizontal~~
28 ~~construction, an agent may procure multiple contracts for professional~~
29 ~~services, construction manager at risk construction services, design build~~
30 ~~construction services or job order contracting construction services under a~~
31 ~~single request for qualifications solicitation under this subsection or, for~~
32 ~~job order contracting construction services or design build construction~~
33 ~~services, under a single request for qualifications and request for proposals~~
34 ~~solicitation under this subsection and subsection F of this section. If an~~
35 ~~agent does this:~~

36 ~~(a) The advertisement and the request for qualifications shall state~~
37 ~~that multiple contracts may or will be awarded, shall state the number of~~
38 ~~contracts that may or will be awarded and shall describe the services to be~~
39 ~~performed under each contract.~~

40 ~~(b) There shall be a single selection process for all of the multiple~~
41 ~~contracts, except that for each contract there shall be a separate final list~~
42 ~~and a separate negotiation under subsection E of this section or a separate~~
43 ~~request for proposals competition under subsection F of this section.~~
44 ~~However, if the request for qualifications specifies that all of the multiple~~
45 ~~contracts will be awarded to a single contractor, there may be a single final~~

1 ~~list and a single negotiation for all of the multiple contracts under~~
2 ~~subsection E of this section or a single request for proposals competition~~
3 ~~under subsection F of this section.~~

4 ~~(c) The agent may award all of the multiple contracts to one~~
5 ~~contractor or may award the multiple contracts to multiple contractors.~~

6 ~~4. For professional services, an agent may procure multiple contracts~~
7 ~~using a single request for qualifications solicitation under this subsection,~~
8 ~~except that professional services that are part of design build construction~~
9 ~~services may not be procured under this paragraph. Each of the multiple~~
10 ~~contracts for professional services must have a term not exceeding five years~~
11 ~~and may continue in effect after the five year term for professional services~~
12 ~~on projects commenced within the five year term.~~

13 ~~5. An agent may procure multiple contracts for job order contracting~~
14 ~~construction services using a single request for qualifications solicitation~~
15 ~~under this subsection or using a single request for qualifications and~~
16 ~~request for proposals solicitation under this subsection and subsection F of~~
17 ~~this section.~~

18 ~~6. Except for horizontal construction, an agent may procure multiple~~
19 ~~contracts for construction manager at risk construction services or for~~
20 ~~design build construction services using a single request for qualifications~~
21 ~~solicitation under this subsection or for design build construction services~~
22 ~~using a single request for qualifications and request for proposals~~
23 ~~solicitation under this subsection and subsection F of this section but in~~
24 ~~either case only for a specific single project. Portions of the specific~~
25 ~~single project shall be allocated to separate contracts.~~

26 ~~7. For construction manager at risk construction services,~~
27 ~~design build construction services and job order contracting construction~~
28 ~~services if the contract will be negotiated under subsection E of this~~
29 ~~section or for job order contracting construction services if the contract~~
30 ~~will be awarded pursuant to subsection F of this section:~~

31 ~~(a) The person or firm selected to perform the construction services~~
32 ~~must select subcontractors based on qualifications alone or on a combination~~
33 ~~of qualifications and price and shall not select subcontractors based on~~
34 ~~price alone. A qualifications and price selection may be a single step~~
35 ~~selection based on a combination of qualifications and price or a two step~~
36 ~~selection. In a two step selection, the first step shall be based on~~
37 ~~qualifications alone and the second step may be based on a combination of~~
38 ~~qualifications and price or on price alone.~~

39 ~~(b) The agent shall include in the request for qualifications either:~~

40 ~~(i) A requirement that each person or firm submit a proposed~~
41 ~~subcontractor selection plan, a requirement that the proposed subcontractor~~
42 ~~selection plan must select subcontractors based on qualifications alone or on~~
43 ~~a combination of qualifications and price and shall not select subcontractors~~
44 ~~based on price alone and, as a selection criteria under the request for~~

1 ~~qualifications, an evaluation of each person's or firm's proposed~~
2 ~~subcontractor selection plan.~~

3 ~~(ii) A subcontractor selection plan adopted by the agent that will~~
4 ~~apply to the person or firm that is selected to perform the construction~~
5 ~~services and that requires subcontractors to be selected based on~~
6 ~~qualifications alone or on a combination of qualifications and price and not~~
7 ~~based on price alone, a requirement that each person or firm must submit a~~
8 ~~description of the procedures it proposes to use to carry out the agent's~~
9 ~~subcontractor selection plan and, as a selection criteria under the request~~
10 ~~for qualifications, an evaluation of each person's or firm's proposed~~
11 ~~procedures to carry out the agent's subcontractor selection plan.~~

12 ~~(c) The agent shall include in its contract with the selected person~~
13 ~~or firm either:~~

14 ~~(i) If the agent included its subcontractor selection plan in the~~
15 ~~request for qualifications, the agent's subcontractor selection plan and the~~
16 ~~procedures proposed by the selected person or firm in submitting its~~
17 ~~qualifications with those modifications to the procedures as the agent and~~
18 ~~the selected person or firm agree.~~

19 ~~(ii) If the agent did not include its subcontractor selection plan in~~
20 ~~the request for qualifications, the subcontractor selection plan proposed by~~
21 ~~the selected person or firm in submitting its qualifications with those~~
22 ~~modifications as the agent and the selected person or firm agree.~~

23 ~~(d) In making the selection of subcontractors, the person or firm~~
24 ~~selected to perform the construction services shall use the subcontractor~~
25 ~~selection plan and any procedures included in its contract.~~

26 ~~8. The agent and the selection committee shall not request or consider~~
27 ~~fees, price, man hours or any other cost information at any point in the~~
28 ~~selection process under this subsection or subsection D of this section,~~
29 ~~including the selection of the persons or firms to be interviewed, the~~
30 ~~selection of the persons or firms to be on the final list, in determining the~~
31 ~~order of preference of persons or firms on the final list or for any other~~
32 ~~purpose in the selection process.~~

33 ~~9. For construction manager at risk construction services and~~
34 ~~design build construction services, the contract or contracts under a single~~
35 ~~request for qualifications solicitation or for design build construction~~
36 ~~services a single request for qualifications and request for proposals~~
37 ~~solicitation shall be limited to a specific single project.~~

38 (c) IF THE CONTRACT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS
39 SECTION, BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE HIGHEST RANKING
40 PERSON OR FIRM ON THE FINAL LIST THAT IT IS THE HIGHEST RANKING PERSON OR
41 FIRM, THE AGENT SHALL SEND ACTUAL NOTICE TO EACH OF THE FOLLOWING THAT IT IS
42 NOT THE HIGHEST PERSON OR FIRM ON THE FINAL LIST OR THAT ANOTHER PERSON OR
43 FIRM IS THE HIGHEST RANKING PERSON OR FIRM ON THE FINAL LIST:

44 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED.

1 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT
2 MADE SUBMITTALS.

3 (d) IF THE CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS
4 SECTION, BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE PERSONS OR
5 FIRMS ON THE FINAL LIST THAT THEY ARE ON THE FINAL LIST, THE AGENT SHALL SEND
6 ACTUAL NOTICE TO EACH OF THE FOLLOWING PERSONS OR FIRMS THAT THEY ARE NOT ON
7 THE FINAL LIST OR THAT OTHER PERSONS OR FIRMS ARE ON THE FINAL LIST:

8 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS OR FIRMS INTERVIEWED.

9 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS OR FIRMS THAT MADE
10 SUBMITTALS.

11 D. An agent shall award ~~a~~ THE SINGLE contract ~~for professional~~
12 ~~services or for construction services to one of the persons or firms on the~~
13 ~~final list for that contract prepared pursuant to subsection C of this~~
14 ~~section~~ UNDER THE PROCUREMENT as provided in subsection E or F of this
15 section. ~~, except that, if fewer than the number of persons or firms on the~~
16 ~~final list respond to the request for proposals pursuant to subsection F of~~
17 ~~this section but at least two persons or firms on the final list submit~~
18 ~~responsive proposals or if one or more of the persons or firms on the final~~
19 ~~list drop out of the selection process pursuant to subsection E or F of this~~
20 ~~section:~~

21 ~~1. If there are three or more remaining persons or firms, the agent~~
22 ~~shall proceed with the selection process.~~

23 ~~2. If there are only two remaining persons or firms, as the agent~~
24 ~~deems necessary and appropriate, the agent may elect to proceed with the~~
25 ~~selection process with the two persons or firms or may elect to terminate the~~
26 ~~selection process and may elect to readvertise pursuant to subsection C of~~
27 ~~this section.~~

28 ~~3. If there is only one remaining person or firm, the agent may award~~
29 ~~the contract to a single person or firm if the agent determines in writing~~
30 ~~that the fee negotiated pursuant to subsection E of this section is fair and~~
31 ~~reasonable and that either other prospective persons or firms had reasonable~~
32 ~~opportunity to respond or there is not adequate time for a resolicitation.~~

33 E. ~~For each contract included in the request for qualifications, the~~
34 ~~agent shall enter into separate negotiations for the contract with the~~
35 ~~highest qualified person or firm on the final list for that contract~~
36 ~~determined pursuant to subsection C of this section for the professional~~
37 ~~services or for the construction services. However, if the request for~~
38 ~~qualifications is for multiple contracts and specifies that all of the~~
39 ~~multiple contracts will be awarded to a single contractor, there may be a~~
40 ~~single negotiation for all of the multiple contracts. The negotiations shall~~
41 ~~include consideration of compensation and other contract terms that the agent~~
42 ~~determines to be fair and reasonable to the agent. In making this decision,~~
43 ~~the agent shall take into account the estimated value, the scope, the~~
44 ~~complexity and the nature of the professional services or construction~~

1 ~~services to be rendered.~~ THE AGENT SHALL CONDUCT NEGOTIATIONS WITH PERSONS
2 OR FIRMS ON THE FINAL LIST AS FOLLOWS:

3 1. THE PROCUREMENT IS FOR A SINGLE CONTRACT FOR CONSTRUCTION SERVICES
4 OR PROFESSIONAL SERVICES, AND THERE IS ONE FINAL LIST.

5 2. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF COMPENSATION AND
6 OTHER CONTRACT TERMS THAT THE AGENT DETERMINES TO BE FAIR AND REASONABLE TO
7 THE AGENT. IN MAKING THIS DECISION, THE AGENT SHALL TAKE INTO ACCOUNT THE
8 ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF THE PROFESSIONAL
9 SERVICES OR CONSTRUCTION SERVICES TO BE RENDERED.

10 3. THE AGENT SHALL ENTER INTO NEGOTIATIONS WITH THE HIGHEST QUALIFIED
11 PERSON OR FIRM ON THE FINAL LIST.

12 4. If the agent is not able to negotiate a satisfactory contract with
13 the highest qualified person or firm on the final list, at compensation and
14 on other contract terms the agent determines to be fair and reasonable, the
15 agent shall formally terminate negotiations with that person or firm. The
16 agent ~~may~~ SHALL THEN undertake negotiations with the next most qualified
17 person or firm on the final list in sequence until an agreement is reached or
18 a determination is made to reject all persons or firms on the final list. ~~If
19 a contract for construction services is entered into pursuant to this
20 subsection:~~

21 ~~1. If the contract is for construction manager-at-risk construction
22 services and includes preconstruction services by the contractor or if the
23 contract is for design-build construction services, the agent shall enter
24 into a written contract with the contractor for preconstruction services
25 under which contract the agent shall pay the contractor a fee for
26 preconstruction services in an amount agreed by the agent and the contractor,
27 and the agent shall not request or obtain a fixed price or a guaranteed
28 maximum price for the construction from the contractor or enter into a
29 construction contract with the contractor until after the agent has entered
30 into the written contract for preconstruction services and a preconstruction
31 services fee.~~

32 ~~2. Construction shall not commence until the agent and contractor
33 agree in writing on either a fixed price that the agent will pay for the
34 construction to be commenced or a guaranteed maximum price for the
35 construction to be commenced.~~

36 5. IF IN A PROCUREMENT UNDER THIS SECTION THE AGENCY TERMINATES
37 NEGOTIATIONS WITH A PERSON OR FIRM ON THE FINAL LIST AND COMMENCES
38 NEGOTIATIONS WITH ANOTHER PERSON OR FIRM ON THE FINAL LIST, THE AGENT SHALL
39 NOT IN THAT PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A CONTRACT FOR
40 THE CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES COVERED BY THE FINAL LIST
41 WITH ANY PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE AGENT HAS TERMINATED
42 NEGOTIATIONS.

43 F. As an alternative to subsection E of this section, an agent may
44 award A SINGLE CONTRACT FOR design-build construction services or
45 job-order-contracting construction services as follows:

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

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

5 3. ~~For design-build construction services and job-order contracting~~
6 ~~construction services~~, The request for proposals shall include:

7 (a) The agent's project schedule and project final BUDGET FOR design
8 and construction ~~budget~~ or life cycle budget for a procurement that includes
9 maintenance services or operations services.

10 (b) A statement that the contract or contracts will be awarded to the
11 offeror whose proposal receives the highest number of points under a scoring
12 method.

13 (c) A description of the scoring method, including a list of the
14 factors in the scoring method and the number of points allocated to each
15 factor. EACH FACTOR MUST BE ONE THAT DEMONSTRATES COMPETENCE AND
16 QUALIFICATIONS FOR THE TYPE OF CONSTRUCTION SERVICES IN THE REQUEST FOR
17 PROPOSALS. The factors in the scoring method ~~shall~~ MAY include:

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

20 (ii) Offeror qualifications.

21 (iii) Offeror financial capacity.

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

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

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

35 (vii) An offeror quality management plan.

36 (viii) Other evaluation factors THAT DEMONSTRATE COMPETENCE AND
37 QUALIFICATIONS FOR THE TYPE OF CONSTRUCTION SERVICES IN THE REQUEST FOR
38 PROPOSALS as determined by the agent, if any.

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

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

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

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

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

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

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

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

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

38 9. The agent shall award the contract or contracts to the responsive
39 and responsible offeror whose proposal receives the highest score under the
40 method of scoring in the request for proposals. No other factors or criteria
41 may be used in the evaluation. BEFORE OR AT THE SAME TIME AS THE AGENT
42 NOTIFIES THE WINNING OFFEROR THAT IT HAS WON, THE AGENT SHALL SEND ACTUAL
43 NOTICE TO EACH OTHER OFFEROR EITHER THAT THE OFFEROR HAS NOT WON OR THAT
44 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 ~~budget~~, as prescribed in the request for proposals, but not less than
8 two-tenths of one per cent of the project final BUDGET FOR design and
9 construction ~~budget~~ to each final list offeror who provides a responsive, but
10 unsuccessful, proposal. If the agent does not award a contract, all
11 responsive final list offerors shall receive the stipulated fee based on the
12 owner's ~~estimate of the~~ project final BUDGET FOR design and construction
13 ~~budget~~ as included in the request for proposals. The agent shall pay the
14 stipulated fee to each offeror within ninety days after the award of the
15 initial contract or the decision not to award a contract. In consideration
16 for paying the stipulated fee, the agent may use any ideas or information
17 contained in the proposals in connection with any contract awarded for the
18 project, or in connection with a subsequent procurement, without any
19 obligation to pay any additional compensation to the ~~unsuccessful~~ offerors.
20 Notwithstanding the other provisions of this paragraph, an ~~unsuccessful final~~
21 ~~list~~ offeror may elect to waive the stipulated fee. If an ~~unsuccessful final~~
22 ~~list~~ offeror elects to waive the stipulated fee, the agent may not use ideas
23 and information contained in the offeror's proposal, except that this
24 restriction does not prevent the agent from using any idea or information if
25 the idea or information is also included in a proposal of an offeror that
26 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 OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND
44 THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS
45 THAT SUBMITTED QUALIFICATIONS. AT THE ELECTION OF THE AGENT, THIS

1 DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
2 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
3 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
4 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 OF EACH PERSON OR FIRM THAT WAS INTERVIEWED AND THAT
18 SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS THAT
19 WERE INTERVIEWED. AT THE ELECTION OF THE AGENT, THIS DOCUMENTATION MAY BE IN
20 THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE ENTIRE SELECTION COMMITTEE,
21 IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR INDIVIDUAL SELECTION COMMITTEE
22 MEMBERS OR 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 OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS
32 AND THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR
33 FIRMS THAT SUBMITTED QUALIFICATIONS IN THE SELECTION OF THE PERSONS OR FIRMS
34 TO BE ON THE SHORT LIST TO BE INTERVIEWED. AT THE ELECTION OF THE AGENT,
35 THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
36 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR THE
37 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
38 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 ANY OTHER FORM AS DETERMINED BY THE
13 AGENT.

14 H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL
15 BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

16 ~~G.~~ 1. NOTWITHSTANDING TITLE 39, CHAPTER 1, ARTICLE 2, until ~~an award~~
17 ~~and execution of a contract by an agent~~ THE AGENT AWARDS A CONTRACT OR
18 TERMINATES THE PROCUREMENT, only the name of each person or firm on the final
19 list developed pursuant to subsection C of this section may be made available
20 to the public. All other information received by the agent in response to
21 the request for qualifications PURSUANT TO SUBSECTION C OF THIS SECTION or
22 contained in ~~the~~ proposals SUBMITTED PURSUANT TO SUBSECTION F OF THIS SECTION
23 shall be confidential in order to avoid disclosure of the contents that may
24 be prejudicial to competing SUBMITTERS AND offerors during the selection
25 process. ~~The proposals shall be open to public inspection after the contract~~
26 ~~is awarded and the agent has executed the contract.~~

27 2. AFTER THE AGENT AWARDS THE CONTRACT OR TERMINATES THE PROCUREMENT,
28 THE AGENT SHALL MAKE AVAILABLE TO THE PUBLIC PURSUANT TO TITLE 39, CHAPTER 1,
29 ARTICLE 2 AT A MINIMUM ALL OF THE ITEMS THAT THE AGENT IS REQUIRED TO RETAIN
30 UNDER SUBSECTION G OF THIS SECTION, EXCEPT THE PROPOSALS SUBMITTED IN
31 RESPONSE TO A REQUEST FOR PROPOSALS UNDER SUBSECTION F OF THIS SECTION AND
32 THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
33 SUBDIVISION (a), ITEM (v) AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
34 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION.

35 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
36 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE AGENT HAS ENTERED INTO A
37 CONTRACT OR TERMINATED THE PROCUREMENT. AT A MINIMUM THE PROPOSALS SUBMITTED
38 UNDER SUBSECTION F OF THIS SECTION THAT THE AGENT IS REQUIRED TO RETAIN UNDER
39 SUBSECTION G OF THIS SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC AFTER THE
40 AGENT HAS ENTERED INTO A CONTRACT OR TERMINATED THE PROCUREMENT.

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

44 5. THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
45 SUBDIVISION (a), ITEM (v) AND SUBDIVISION (b), ITEMS (v) AND (viii) AND

1 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION ARE AVAILABLE TO THE EXTENT
2 PROVIDED IN TITLE 39, CHAPTER 1, ARTICLE 2.

3 ~~H.~~ I. An agent may cancel a request for qualifications or a request
4 for proposals, ~~or~~ reject in whole or in part any or all SUBMITTALS OR
5 proposals, OR DETERMINE NOT TO ENTER INTO A CONTRACT as specified in the
6 solicitation if ~~it~~ THE AGENT DETERMINES IN THE AGENT'S ABSOLUTE AND SOLE
7 DISCRETION THAT THE ACTION is in the best interest of the agent. The agent
8 shall make the reasons for cancellation, ~~or~~ rejection OR DETERMINATION NOT TO
9 ENTER INTO A CONTRACT part of the contract file.

10 ~~I. Notwithstanding any other law:~~

11 ~~1. The contractor for design-build or job-order contracting~~
12 ~~construction services is not required to be registered to perform design~~
13 ~~services pursuant to title 32, chapter 1 if the person or firm actually~~
14 ~~performing the design services on behalf of the contractor is appropriately~~
15 ~~registered.~~

16 ~~2. The contractor for construction-manager-at-risk, design-build or~~
17 ~~job-order contracting construction services shall be licensed to perform~~
18 ~~construction pursuant to title 32, chapter 10.~~

19 ~~3. For each project for horizontal construction under a design-build~~
20 ~~or construction-manager-at-risk construction services contract, the licensed~~
21 ~~contractor performing the contract shall perform, with the contractor's own~~
22 ~~organization, construction work that amounts to not less than forty-five per~~
23 ~~cent of the total contract price for construction. For the purposes of this~~
24 ~~paragraph, the total contract price for construction does not include the~~
25 ~~cost of preconstruction services, design services or any other related~~
26 ~~services or the cost to procure any right of way or other cost of~~
27 ~~condemnation.~~

28 ~~4. There shall be a separate request for qualifications under~~
29 ~~subsection C of this section for each contract for horizontal construction~~
30 ~~construction manager at risk construction services or horizontal construction~~
31 ~~design-build construction services.~~

32 ~~J. For job-order contracting construction services only:~~

33 ~~1. The maximum dollar amount of an individual job order shall be one~~
34 ~~million dollars or such higher or lower amount prescribed by the agent in an~~
35 ~~action noticed pursuant to title 38, chapter 3, article 3.1 or a rule adopted~~
36 ~~by the agent as the maximum amount of an individual job order. Requirements~~
37 ~~shall not be artificially divided or fragmented in order to constitute a job~~
38 ~~order that satisfies this requirement.~~

39 ~~2. If the contractor subcontracts or intends to subcontract part or~~
40 ~~all of the work under a job order and if the job order construction services~~
41 ~~contract includes descriptions of standard individual tasks, standard unit~~
42 ~~prices for standard individual tasks and pricing of job orders based on the~~
43 ~~number of units of standard individual tasks in the job order.~~

1 ~~(a) The contractor has a duty to deliver promptly to each~~
2 ~~subcontractor invited to bid a coefficient to the contractor to do all or~~
3 ~~part of the work under one or more job orders.~~

4 ~~(i) A copy of the descriptions of all standard individual tasks on~~
5 ~~which the subcontractor is invited to bid.~~

6 ~~(ii) A copy of the standard unit prices for the individual tasks on~~
7 ~~which the subcontractor is invited to bid.~~

8 ~~(b) If not previously delivered to the subcontractor, the contractor~~
9 ~~has a duty to deliver promptly the following to each subcontractor invited to~~
10 ~~or that has agreed to do any of the work included in any job order:~~

11 ~~(i) A copy of the description of each standard individual task that is~~
12 ~~included in the job order and that the subcontractor is invited to perform.~~

13 ~~(ii) The number of units of each standard individual task that is~~
14 ~~included in the job order and that the subcontractor is invited to perform.~~

15 ~~(iii) The standard unit price for each standard individual task that~~
16 ~~is included in the job order and that the subcontractor is invited to~~
17 ~~perform.~~

18 ~~K. Notwithstanding anything to the contrary in this chapter, an agent~~
19 ~~shall not procure any horizontal construction using the~~
20 ~~construction manager at risk, design build or job order contracting method of~~
21 ~~project delivery after June 30, 2010. For purposes of this paragraph, an~~
22 ~~agent procures horizontal construction when the contract for the construction~~
23 ~~services is executed by the agent and the contractor for the~~
24 ~~construction manager at risk, design build or job order contracting~~
25 ~~construction services. If a contract is executed for construction services~~
26 ~~on or before June 30, 2010, construction services under the contract may be~~
27 ~~rendered in whole or in part after June 30, 2010.~~

28 ~~L. Notwithstanding anything to the contrary in this section or this~~
29 ~~title, an agent shall not:~~

30 ~~1. Enter into a contract as contractor to provide~~
31 ~~construction manager at risk construction services, design build construction~~
32 ~~services or job order contracting construction services.~~

33 ~~2. Contract with itself, with another agent, with this state or with~~
34 ~~any other governmental unit of this state or the federal government for the~~
35 ~~agent to provide construction manager at risk construction services,~~
36 ~~design build construction services or job order contracting construction~~
37 ~~services.~~

38 ~~M. The prohibitions prescribed in subsection L of this section do not~~
39 ~~prohibit an agent from providing construction for itself as provided by law.~~

40 ~~N. The agent shall include in each contract for construction services~~
41 ~~the full street or physical address of each separate location at which the~~
42 ~~construction will be performed and a requirement that the contractor and each~~
43 ~~subcontractor at any level include in each of its subcontracts the same~~
44 ~~address information. The contractor and each subcontractor at any level~~

1 ~~shall include in each subcontract the full street or physical address of each~~
2 ~~separate location at which construction work will be performed.~~

3 J. IF THE AGENT DOES NOT HAVE A PROCUREMENT PROTEST POLICY AND
4 PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE AGENT, FOR
5 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION THE AGENT SHALL FOLLOW
6 THE PROCUREMENT PROTEST POLICY AND PROCEDURES OF THE DEPARTMENT OF
7 ADMINISTRATION. THE AGENT SHALL PROCESS ALL PROTESTS RELATING TO
8 PROCUREMENTS UNDER THIS SECTION.

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

13 Sec. 14. Renumber

14 Sections 34-604, 34-605, 34-606, 34-607, 34-608, 34-609, 34-610 and
15 34-611, Arizona Revised Statutes, are renumbered as sections 34-606, 34-607,
16 34-608, 34-609, 34-610, 34-611, 34-612 and 34-613, respectively.

17 Sec. 15. Title 34, chapter 6, article 1, Arizona Revised Statutes, is
18 amended by adding new sections 34-604 and 34-605, to read:

19 34-604. Procurement of multiple contracts for certain
20 job-order-contracting construction services and
21 certain professional services; definition

22 A. EXCEPT FOR MULTIPLE CONTRACTS AN AGENT PROCURES PURSUANT TO SECTION
23 34-103, SECTION 34-606 OR THIS SECTION, AN AGENT SHALL NOT PROCURE IN A
24 SINGLE PROCUREMENT MULTIPLE CONTRACTS FOR CONSTRUCTION SERVICES OR
25 PROFESSIONAL SERVICES. IN A PROCUREMENT UNDER THIS SECTION, THERE IS A
26 SINGLE PROCUREMENT PROCESS FOR ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE
27 PROCUREMENT. AN AGENT MAY PROCURE UNDER THIS SECTION:

28 1. MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION
29 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS.

30 2. MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES TO BE AWARDED TO
31 SEPARATE PERSONS OR FIRMS OR TO BE AWARDED TO A SINGLE PERSON OR FIRM AS
32 SPECIFIED IN THE REQUEST FOR QUALIFICATIONS.

33 B. AN AGENT SHALL PROVIDE NOTICE OF EACH PROCUREMENT UNDER THIS
34 SECTION AND SHALL AWARD CONTRACTS ON THE BASIS OF DEMONSTRATED COMPETENCE AND
35 QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES
36 PURSUANT TO THE PROCEDURES PRESCRIBED IN THIS SECTION.

37 C. IN A PROCUREMENT PURSUANT TO THIS SECTION:

38 1. THE FOLLOWING REQUIREMENTS APPLY:

39 (a) THE AGENT AND THE SELECTION COMMITTEE SHALL NOT REQUEST OR
40 CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN
41 THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION D OF THIS
42 SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE INTERVIEWED, THE
43 SELECTION OF PERSONS OR FIRMS TO BE ON A FINAL LIST, IN DETERMINING THE ORDER
44 OF PREFERENCE OF PERSONS OR FIRMS ON A FINAL LIST OR FOR ANY OTHER PURPOSE IN
45 THE SELECTION PROCESS.

1 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
2 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON A FINAL LIST AND
3 THEIR ORDER ON A FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND SHALL
4 CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE AGENT
5 FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER FACTORS OR
6 CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER ACTIONS.

7 (c) IF THE AGENT ENTERS INTO THE NUMBER OF MULTIPLE CONTRACTS BEING
8 PROCURED FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR PROFESSIONAL
9 SERVICES, A PROCUREMENT UNDER THIS SECTION ENDS. AFTER THAT TIME THE AGENT
10 MAY NOT USE THE PROCUREMENT OR ANY EXISTING FINAL LIST IN THE PROCUREMENT AS
11 THE BASIS FOR ENTERING INTO A REPLACEMENT CONTRACT WITH ANY OTHER PERSON OR
12 FIRM THAT PARTICIPATED IN THE PROCUREMENT.

13 (d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
14 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
15 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

16 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
17 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT
18 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE
19 PROCUREMENT, THE AGENT MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
20 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING
21 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE AGENT MAY
22 ELECT TO TERMINATE THE PROCUREMENT.

23 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
24 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO
25 SUBSECTION E OF THIS SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE
26 PERSON OR FIRM RESPONDS TO THE REQUEST FOR QUALIFICATIONS OR IF ONE OR MORE
27 PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND
28 RESPONSIBLE PERSON OR FIRM REMAINS IN THE PROCUREMENT, THE AGENT MAY ELECT TO
29 PROCEED WITH THE PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE AGENT
30 DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF
31 THIS SECTION IS FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS
32 OR FIRMS HAD REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME
33 FOR A RESOLICITATION.

34 (iii) IF A PERSON OR FIRM ON A FINAL LIST WITHDRAWS OR IS REMOVED FROM
35 THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE BEST
36 INTEREST OF THE AGENT, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON OR
37 FIRM ON THE FINAL LIST WITH ANOTHER PERSON OR FIRM THAT SUBMITTED
38 QUALIFICATIONS IN THE PROCUREMENT AND THAT IS SELECTED BY THE SELECTION
39 COMMITTEE AS THE NEXT MOST QUALIFIED.

40 2. AN AGENT SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR EACH
41 PROCUREMENT AND PUBLISH NOTICE OF THE REQUEST FOR QUALIFICATIONS. THIS
42 NOTICE SHALL BE PUBLISHED BY ADVERTISING IN A NEWSPAPER OF GENERAL
43 CIRCULATION IN THE COUNTY IN WHICH THE AGENT IS LOCATED FOR TWO CONSECUTIVE
44 PUBLICATIONS IF IT IS A WEEKLY NEWSPAPER OR FOR TWO PUBLICATIONS THAT ARE AT
45 LEAST SIX BUT NO MORE THAN TEN DAYS APART IF IT IS A DAILY NEWSPAPER. THE

1 PUBLICATION SHALL INCLUDE THE FACT THAT MULTIPLE CONTRACTS MAY OR WILL BE
2 AWARDED, SHALL STATE THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND
3 SHALL DESCRIBE THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
4 CONSTRUCTION SERVICES TO BE PERFORMED UNDER EACH CONTRACT. THE REQUEST FOR
5 QUALIFICATIONS SHALL:

6 (a) STATE THE FOLLOWING INFORMATION ABOUT THE CONTRACTS THAT MAY OR
7 WILL BE AWARDED:

8 (i) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
9 SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE
10 PERSONS OR FIRMS, THAT MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING
11 CONSTRUCTION SERVICES MAY OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT
12 MAY OR WILL BE AWARDED, THE SERVICES TO BE PERFORMED UNDER EACH OF THE
13 MULTIPLE CONTRACTS AND THAT EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO
14 A SEPARATE PERSON OR FIRM.

15 (ii) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
16 PROFESSIONAL SERVICES, THAT MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES MAY
17 OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED, THE
18 SERVICES TO BE PERFORMED UNDER EACH OF THE MULTIPLE CONTRACTS AND EITHER THAT
19 EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO A SEPARATE PERSON OR FIRM
20 OR THAT ALL OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO THE SAME PERSON OR
21 FIRM.

22 (b) STATE AS TO FINAL LISTS:

23 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
24 TO BE AWARDED TO A SINGLE PERSON OR FIRM, THAT THERE WILL BE A SINGLE FINAL
25 LIST OF AT LEAST THREE BUT NO MORE THAN FIVE PERSONS OR FIRMS.

26 (ii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR SIMILAR
27 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
28 OR FIRMS OR IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR SIMILAR PROFESSIONAL
29 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT THERE WILL BE A
30 SINGLE FINAL LIST AND THE NUMBER OF PERSONS OR FIRMS ON THE FINAL LIST, WHICH
31 SHALL BE THE SUM OF THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND A
32 NUMBER THAT IS DETERMINED BY THE AGENT AND THAT IS NOT MORE THAN FIVE.

33 (iii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR DIFFERENT
34 PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT THERE
35 WILL BE A SEPARATE FINAL LIST FOR EACH TYPE OF PROFESSIONAL SERVICES AND THAT
36 THE NUMBER OF PERSONS OR FIRMS ON EACH FINAL LIST WILL BE THE NUMBER OF
37 CONTRACTS THAT MAY OR WILL BE AWARDED FOR EACH TYPE OF PROFESSIONAL SERVICES
38 AND A NUMBER THAT IS DETERMINED BY THE AGENT AND THAT IS NOT MORE THAN FIVE.

39 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
40 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
41 EXCEPT THAT IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
42 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS ONE OF THE
43 CRITERIA SHALL BE THE PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR
44 PROCEDURES TO IMPLEMENT THE AGENT'S SUBCONTRACTOR SELECTION PLAN. ALL
45 SELECTION CRITERIA PURSUANT TO THIS SUBSECTION SHALL BE FACTORS THAT

1 DEMONSTRATE COMPETENCE AND QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL
2 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES INCLUDED IN THE
3 PROCUREMENT. IF:

4 (i) INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
5 STATE THE SELECTION CRITERIA AND THE RELATIVE WEIGHT OF THE SELECTION
6 CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND
7 THE REQUEST FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE
8 WEIGHT OF THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS
9 ON EACH FINAL LIST AND IN DETERMINING THEIR ORDER ON EACH FINAL LIST. THE
10 FINAL LIST SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE
11 SELECTION CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR
12 FIRMS TO BE INTERVIEWED. THE REQUEST FOR QUALIFICATIONS ALSO SHALL STATE
13 WHETHER THE AGENT WILL SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND
14 THEIR ORDER ON THE FINAL LIST SOLELY THROUGH THE RESULTS OF THE INTERVIEW
15 PROCESS OR THROUGH THE COMBINED RESULTS OF BOTH THE INTERVIEW PROCESS AND THE
16 EVALUATION OF STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA SUBMITTED IN
17 RESPONSE TO THE AGENT'S REQUEST FOR QUALIFICATIONS.

18 (ii) INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
19 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
20 BE USED IN SELECTING THE PERSONS OR FIRMS ON EACH FINAL LIST AND IN
21 DETERMINING THEIR ORDER ON EACH FINAL LIST.

22 (d) IF THE AGENT WILL HOLD INTERVIEWS AS PART OF THE SELECTION
23 PROCESS:

24 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
25 TO BE AWARDED TO THE SAME PERSON OR FIRM, STATE THAT INTERVIEWS WILL BE HELD
26 AND THAT THE INTERVIEWS WILL BE WITH AT LEAST THREE BUT NOT MORE THAN FIVE
27 PERSONS OR FIRMS.

28 (ii) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR SIMILAR
29 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
30 OR FIRMS OR IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR SIMILAR PROFESSIONAL
31 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, STATE THAT INTERVIEWS
32 WILL BE HELD AND THAT THE INTERVIEWS WILL BE WITH A SPECIFIED NUMBER OF
33 PERSONS OR FIRMS. THE SPECIFIED NUMBER SHALL BE STATED IN THE REQUEST FOR
34 QUALIFICATIONS, SHALL BE DETERMINED BY THE AGENT, AND SHALL BE THE SUM OF THE
35 NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND A NUMBER THAT IS
36 DETERMINED BY THE AGENT AND THAT IS NOT MORE THAN FIVE.

37 (iii) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR DIFFERENT
38 PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, STATE THAT
39 INTERVIEWS WILL BE HELD AND THAT THE INTERVIEWS WILL BE WITH A SPECIFIED
40 NUMBER OF PERSONS OR FIRMS. THE SPECIFIED NUMBER SHALL BE STATED IN THE
41 REQUEST FOR QUALIFICATIONS, SHALL BE DETERMINED BY THE AGENT, SHALL BE AT
42 LEAST THREE TIMES THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND
43 SHALL NOT BE MORE THAN FIVE TIMES THE NUMBER OF CONTRACTS THAT MAY OR WILL BE
44 AWARDED.

1 (e) FOR PROCUREMENTS OF MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
2 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, INCLUDE
3 EITHER:

4 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
5 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
6 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
7 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
8 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

9 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE AGENT THAT APPLIES
10 TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE JOB-ORDER-CONTRACTING
11 CONSTRUCTION SERVICES AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED
12 ON QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
13 NOT BASED ON PRICE ALONE AND A REQUIREMENT THAT EACH PERSON OR FIRM MUST
14 SUBMIT A DESCRIPTION OF THE PROCEDURES IT PROPOSES TO USE TO IMPLEMENT THE
15 AGENT'S SUBCONTRACTOR SELECTION PLAN.

16 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
17 AGENT'S PROTEST POLICY AND PROCEDURES OR, IF THE AGENT DOES NOT HAVE A
18 PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE PROTEST POLICY AND
19 PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION APPLY TO ANY PROTESTS
20 IN CONNECTION WITH THE PROCUREMENT.

21 3. AN AGENT SHALL INITIATE AN APPROPRIATELY QUALIFIED SELECTION
22 COMMITTEE FOR EACH REQUEST FOR QUALIFICATIONS. THE AGENT SHALL ENSURE THAT
23 THE SELECTION COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION
24 COMMITTEE. EACH SELECTION COMMITTEE MUST INCLUDE ONE EMPLOYEE OF THE AGENT
25 OR AN AGENT REPRESENTATIVE WHO IS APPOINTED BY THE AGENT. THE SAME SELECTION
26 COMMITTEE SHALL FUNCTION AS TO ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE
27 PROCUREMENT. IF THE AGENT IS PROCURING MULTIPLE CONTRACTS FOR PROFESSIONAL
28 SERVICES, THE AGENT SHALL DETERMINE THE NUMBER AND QUALIFICATIONS OF THE
29 SELECTION COMMITTEE MEMBERS. A SELECTION COMMITTEE FOR THE PROCUREMENT OF
30 MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL HAVE
31 NOT MORE THAN SEVEN MEMBERS, EXCEPT THAT IF THE CONTRACT INVOLVES THE AGENT
32 AND ADDITIONAL GOVERNMENTAL OR PRIVATE PARTICIPANTS, THE NUMBER OF MEMBERS OF
33 THE SELECTION COMMITTEE SHALL BE INCREASED BY ONE FOR EACH ADDITIONAL
34 PARTICIPANT, EXCEPT THAT THE MAXIMUM NUMBER OF MEMBERS OF THE SELECTION
35 COMMITTEE IS NINE. THE SELECTION COMMITTEE FOR MULTIPLE CONTRACTS FOR
36 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL INCLUDE AT LEAST ONE PERSON
37 WHO IS A SENIOR MANAGEMENT EMPLOYEE OF A LICENSED CONTRACTOR AND ONE PERSON
38 WHO IS AN ARCHITECT OR ENGINEER REGISTERED PURSUANT TO SECTION 32-121. THESE
39 MEMBERS MAY BE EMPLOYEES OF THE AGENT OR OUTSIDE CONSULTANTS. OUTSIDE
40 CONTRACTORS, ARCHITECTS AND ENGINEERS SERVING ON A SELECTION COMMITTEE SHALL
41 NOT RECEIVE COMPENSATION FROM THE AGENT FOR PERFORMING THIS SERVICE, BUT THE
42 AGENT MAY ELECT TO REIMBURSE OUTSIDE CONTRACTORS, ARCHITECTS AND ENGINEERS
43 FOR TRAVEL, LODGING AND OTHER EXPENSES INCURRED IN CONNECTION WITH SERVICE ON
44 A SELECTION COMMITTEE. A PERSON WHO IS A MEMBER OF A SELECTION COMMITTEE
45 SHALL NOT BE A CONTRACTOR UNDER A CONTRACT AWARDED UNDER THE PROCUREMENT OR

1 PROVIDE ANY PROFESSIONAL SERVICES, CONSTRUCTION, CONSTRUCTION SERVICES,
2 MATERIALS OR OTHER SERVICES UNDER THE CONTRACT. THE SELECTION COMMITTEE AND
3 THE AGENT SHALL DO THE FOLLOWING:

4 (a) IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR QUALIFICATIONS:

5 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSONS OR FIRMS TO BE
6 INTERVIEWED BY EVALUATING THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE
7 DATA THAT ARE SUBMITTED IN RESPONSE TO THE AGENT'S REQUEST FOR QUALIFICATIONS
8 BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
9 CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO DETERMINE THE
10 PERSONS OR FIRMS TO BE INTERVIEWED.

11 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
12 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
13 ON A FINAL LIST AND TO DETERMINE THEIR ORDER ON A FINAL LIST ARE NOT INCLUDED
14 IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD THE AGENT
15 SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE INTERVIEWED THE SELECTION
16 CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO BE USED TO SELECT
17 THE PERSONS OR FIRMS ON EACH FINAL LIST AND TO DETERMINE THEIR ORDER ON EACH
18 FINAL LIST. THESE SELECTION CRITERIA AND RELATIVE WEIGHT MAY BE DIFFERENT
19 THAN THE SELECTION CRITERIA AND RELATIVE WEIGHT USED TO DETERMINE THE PERSONS
20 OR FIRMS TO BE INTERVIEWED.

21 (iii) THE SELECTION COMMITTEE SHALL CONDUCT INTERVIEWS WITH THE NUMBER
22 OF PERSONS OR FIRMS TO BE INTERVIEWED AS STATED IN THE REQUEST FOR
23 QUALIFICATIONS REGARDING THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
24 CONSTRUCTION SERVICES AND THE RELATIVE METHODS OF APPROACH FOR FURNISHING THE
25 REQUIRED PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION
26 SERVICES.

27 (b) BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
28 SELECTION CRITERIA SPECIFIED AS PROVIDED IN THIS SUBSECTION FOR SELECTION OF
29 THE PERSONS OR FIRMS ON EACH FINAL LIST AND THEIR ORDER ON EACH FINAL LIST,
30 THE SELECTION COMMITTEE SHALL SELECT THE PERSONS OR FIRMS FOR EACH FINAL LIST
31 AND IN THE CASE OF A FINAL LIST OR FINAL LISTS FOR MULTIPLE CONTRACTS THAT
32 WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION, RANK THE PERSONS OR
33 FIRMS ON EACH FINAL LIST IN ORDER OF PREFERENCE. IF THE PROCUREMENT IS FOR
34 MULTIPLE CONTRACTS FOR DIFFERENT PROFESSIONAL SERVICES TO BE AWARDED TO
35 SEPARATE PERSONS OR FIRMS, THERE IS A SEPARATE FINAL LIST FOR EACH TYPE OF
36 PROFESSIONAL SERVICES, AND IF A PERSON OR FIRM SUBMITTED QUALIFICATIONS FOR
37 MORE THAN ONE TYPE OF PROFESSIONAL SERVICES, THE PERSON OR FIRM MAY BE ON
38 MORE THAN ONE FINAL LIST.

39 (c) IF THE CONTRACT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS
40 SECTION, BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE PERSONS OR
41 FIRMS ON EACH FINAL LIST THAT THEY ARE ON THAT FINAL LIST, THE AGENT SHALL
42 SEND ACTUAL NOTICE TO THE FOLLOWING PERSONS OR FIRMS THAT THEY ARE NOT ON
43 THAT FINAL LIST:

44 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED
45 FOR THAT FINAL LIST.

1 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT
2 MADE SUBMITTALS FOR THAT FINAL LIST.

3 (d) IF THE CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS
4 SECTION, BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE PERSONS OR
5 FIRMS ON THE FINAL LIST THAT THEY ARE ON THE FINAL LIST, THE AGENT SHALL SEND
6 ACTUAL NOTICE TO EACH OF THE FOLLOWING PERSONS OR FIRMS THAT THEY ARE NOT ON
7 THE FINAL LIST OR THAT OTHER PERSONS OR FIRMS ARE ON THE FINAL LIST:

8 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS OR FIRMS INTERVIEWED.

9 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS OR FIRMS THAT MADE
10 SUBMITTALS.

11 D. AN AGENT SHALL AWARD MULTIPLE CONTRACTS SPECIFIED IN THE REQUEST
12 FOR QUALIFICATIONS AS PROVIDED IN SUBSECTION E OR F OF THIS SECTION.

13 E. THE AGENT SHALL CONDUCT NEGOTIATIONS WITH PERSONS OR FIRMS ON THE
14 FINAL LIST OR FINAL LISTS. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF
15 COMPENSATION AND OTHER CONTRACT TERMS THAT THE AGENT DETERMINES TO BE FAIR
16 AND REASONABLE TO THE AGENT. IN MAKING THIS DECISION, THE AGENT SHALL TAKE
17 INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF
18 THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO
19 BE RENDERED. IF IN A PROCUREMENT UNDER THIS SECTION THE AGENT TERMINATES
20 NEGOTIATIONS WITH A PERSON OR FIRM ON A FINAL LIST AND COMMENCES NEGOTIATIONS
21 WITH ANOTHER PERSON OR FIRM ON THAT FINAL LIST, THE AGENT SHALL NOT IN THAT
22 PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A CONTRACT FOR THE
23 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES COVERED
24 BY THAT FINAL LIST WITH ANY PERSON OR FIRM ON THAT FINAL LIST WITH WHOM THE
25 AGENT HAS TERMINATED NEGOTIATIONS. IF THE PROCUREMENT IS FOR:

26 1. MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES TO BE AWARDED TO A
27 SINGLE PERSON OR FIRM, THERE IS ONE FINAL LIST AND THE AGENT SHALL ENTER INTO
28 NEGOTIATIONS WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL LIST. IF
29 THE AGENT IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH THE HIGHEST
30 QUALIFIED PERSON OR FIRM ON THE FINAL LIST, AT COMPENSATION AND ON OTHER
31 CONTRACT TERMS THE AGENT DETERMINES TO BE FAIR AND REASONABLE, THE AGENT
32 SHALL THEN UNDERTAKE NEGOTIATIONS WITH THE NEXT MOST QUALIFIED PERSON OR FIRM
33 ON THE FINAL LIST IN SEQUENCE UNTIL AN AGREEMENT IS REACHED OR A
34 DETERMINATION IS MADE TO REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST.

35 2. MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION
36 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS OR FOR MULTIPLE CONTRACTS
37 FOR SIMILAR PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS,
38 THERE IS ONE FINAL LIST AND THE AGENT SHALL ENTER INTO SEPARATE NEGOTIATIONS
39 FOR CONTRACTS WITH THE NUMBER OF THE HIGHEST QUALIFIED PERSONS OR FIRMS ON
40 THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS TO BE AWARDED. IF THE AGENT
41 IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH A PERSON OR FIRM WITH
42 WHOM THE AGENT HAS COMMENCED NEGOTIATIONS, THE AGENT SHALL FORMALLY TERMINATE
43 NEGOTIATIONS WITH THAT PERSON OR FIRM. THE AGENT SHALL THEN UNDERTAKE
44 NEGOTIATIONS FOR A CONTRACT WITH THE NEXT MOST QUALIFIED PERSON OR FIRM ON
45 THE FINAL LIST WITH WHOM THE AGENT IS NOT THEN NEGOTIATING AND WITH WHOM THE

1 AGENT HAS NOT PREVIOUSLY NEGOTIATED IN SEQUENCE UNTIL AN AGREEMENT IS REACHED
2 FOR SOME OR ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE REQUEST FOR
3 QUALIFICATIONS OR A DETERMINATION IS MADE TO REJECT ALL PERSONS OR FIRMS ON
4 THE FINAL LIST.

5 3. MULTIPLE CONTRACTS FOR DIFFERENT PROFESSIONAL SERVICES TO BE
6 AWARDED TO SEPARATE PERSONS OR FIRMS, THERE IS A SEPARATE FINAL LIST FOR EACH
7 TYPE OF PROFESSIONAL SERVICES AND THE AGENT SHALL ENTER INTO SEPARATE
8 NEGOTIATIONS FOR CONTRACTS WITH THE NUMBER OF THE HIGHEST QUALIFIED PERSONS
9 OR FIRMS ON THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS TO BE AWARDED.
10 IF THE AGENT IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH A PERSON
11 OR FIRM WITH WHOM THE AGENT HAS COMMENCED NEGOTIATIONS, THE AGENT SHALL
12 FORMALLY TERMINATE NEGOTIATIONS WITH THAT PERSON OR FIRM. THE AGENT SHALL
13 THEN UNDERTAKE NEGOTIATIONS FOR A CONTRACT WITH THE NEXT MOST QUALIFIED
14 PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE AGENT IS NOT THEN NEGOTIATING
15 AND WITH WHOM THE AGENT HAS NOT PREVIOUSLY NEGOTIATED IN SEQUENCE UNTIL AN
16 AGREEMENT IS REACHED FOR SOME OR ALL OF THE MULTIPLE CONTRACTS INCLUDED IN
17 THE REQUEST FOR QUALIFICATIONS OR A DETERMINATION IS MADE TO REJECT ALL
18 PERSONS OR FIRMS ON THE FINAL LIST.

19 F. AS AN ALTERNATIVE TO SUBSECTION E OF THIS SECTION, AN AGENT MAY
20 AWARD MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO
21 BE AWARDED TO SEPARATE PERSONS OR FIRMS AS FOLLOWS:

22 1. THE AGENT SHALL USE THE SELECTION COMMITTEE APPOINTED FOR THE
23 REQUEST FOR QUALIFICATIONS PURSUANT TO SUBSECTION C OF THIS SECTION.

24 2. THE AGENT SHALL ISSUE A REQUEST FOR PROPOSALS TO THE PERSONS OR
25 FIRMS ON THE FINAL LIST DEVELOPED PURSUANT TO SUBSECTION C OF THIS SECTION.

26 3. THE REQUEST FOR PROPOSALS MAY INCLUDE:

27 (a) THE AGENT'S PROJECT SCHEDULE AND PROJECT FINAL BUDGET FOR DESIGN
28 AND CONSTRUCTION OR LIFE CYCLE BUDGET FOR A PROCUREMENT THAT INCLUDES
29 MAINTENANCE SERVICES OR OPERATIONS SERVICES.

30 (b) A STATEMENT THAT THE MULTIPLE CONTRACTS WILL BE AWARDED TO A
31 SPECIFIED NUMBER OF OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST NUMBER OF
32 POINTS UNDER A SCORING METHOD. THE SPECIFIED NUMBER OF OFFERORS WILL BE THE
33 NUMBER OF CONTRACTS INCLUDED IN THE PROCUREMENT.

34 (c) A DESCRIPTION OF THE SCORING METHOD, INCLUDING A LIST OF THE
35 FACTORS IN THE SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH
36 FACTOR. THE FACTORS IN THE SCORING METHOD SHALL INCLUDE:

37 (i) OFFEROR QUALIFICATIONS.

38 (ii) OFFEROR FINANCIAL CAPACITY.

39 (iii) COMPLIANCE WITH THE AGENT'S PROJECT SCHEDULE.

40 (iv) THE PRICE OR LIFE CYCLE PRICE FOR PROCUREMENTS THAT INCLUDE
41 MAINTENANCE SERVICES, OPERATIONS SERVICES OR FINANCE SERVICES.

42 (v) AN OFFEROR QUALITY MANAGEMENT PLAN.

43 (vi) OTHER EVALUATION FACTORS THAT DEMONSTRATE COMPETENCE AND
44 QUALIFICATIONS FOR THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IN THE
45 REQUEST FOR PROPOSALS AS DETERMINED BY THE AGENT, IF ANY.

1 (d) A REQUIREMENT THAT EACH OFFEROR SUBMIT SEPARATELY A TECHNICAL
2 PROPOSAL AND A PRICE PROPOSAL AND THAT THE OFFEROR'S ENTIRE PROPOSAL BE
3 RESPONSIVE TO THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.

4 (e) 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 (f) 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 MULTIPLE CONTRACTS TO THE RESPONSIVE AND
41 RESPONSIBLE OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST SCORES 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 OFFERORS THAT THEY HAVE WON, THE AGENT SHALL SEND ACTUAL

1 NOTICE TO EACH OTHER OFFEROR EITHER THAT THE OFFEROR HAS NOT WON OR THAT
2 OTHER OFFERORS HAVE WON.

3 10. THE CONTRACTS FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS
4 MADE, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED UNDER
5 SUBSECTION G OF THIS SECTION.

6 G. IF THE PROCUREMENT HAS MULTIPLE FINAL LISTS UNDER SUBSECTION C OF
7 THIS SECTION OR MULTIPLE REQUESTS FOR PROPOSALS UNDER SUBSECTION F OF THIS
8 SECTION, THE AGENT SHALL RETAIN THE ITEMS IN PARAGRAPH 1 OR 2 OF THIS
9 SUBSECTION, AS APPLICABLE, FOR EACH FINAL LIST. AT A MINIMUM, THE AGENT
10 SHALL RETAIN THE FOLLOWING FOR EACH PROCUREMENT UNDER THIS SECTION:

11 1. AS TO EACH FINAL LIST UNDER EACH REQUEST FOR QUALIFICATIONS
12 PROCUREMENT PROCESS UNDER SUBSECTION C OF THIS SECTION:

13 (a) IF INTERVIEWS WERE NOT HELD:

14 (i) THE SUBMITTAL OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL LIST
15 AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE AGENT ENTERS INTO A
16 CONTRACT.

17 (ii) THE FINAL LIST.

18 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
19 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
20 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

21 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
22 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
23 RANK OR SCORE.

24 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
25 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND
26 THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS
27 THAT SUBMITTED QUALIFICATIONS. AT THE ELECTION OF THE AGENT, THIS
28 DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
29 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
30 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
31 AGENT.

32 (b) IF INTERVIEWS WERE HELD:

33 (i) ALL SUBMITTALS OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL
34 LIST AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE AGENT ENTERS
35 INTO A CONTRACT.

36 (ii) THE FINAL LIST.

37 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
38 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
39 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

40 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT WAS
41 INTERVIEWED AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL RANK OR
42 SCORE.

43 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
44 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT WAS INTERVIEWED AND THAT
45 SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS THAT

1 WERE INTERVIEWED. AT THE ELECTION OF THE AGENT, THIS DOCUMENTATION MAY BE IN
2 THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE ENTIRE SELECTION COMMITTEE,
3 IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR INDIVIDUAL SELECTION COMMITTEE
4 MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE AGENT.

5 (vi) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
6 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE SHORT LIST TO
7 BE INTERVIEWED.

8 (vii) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
9 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
10 RANK OR SCORE IN THE SELECTION OF THE PERSONS OR FIRMS TO BE ON THE SHORT
11 LIST TO BE INTERVIEWED.

12 (viii) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON
13 EACH SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS
14 AND THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR
15 FIRMS THAT SUBMITTED QUALIFICATIONS IN THE SELECTION OF THE PERSONS OR FIRMS
16 TO BE ON THE SHORT LIST TO BE INTERVIEWED. AT THE ELECTION OF THE AGENT,
17 THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
18 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR THE
19 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
20 AGENT.

21 2. FOR EACH REQUEST FOR PROPOSALS PROCUREMENT PROCESS UNDER SUBSECTION
22 F OF THIS SECTION:

23 (a) THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM THAT RECEIVED
24 THE HIGHEST SCORE IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS AND THE
25 ENTIRE PROPOSAL SUBMITTED BY EACH PERSON OR FIRM WITH WHICH THE AGENT ENTERS
26 INTO A CONTRACT.

27 (b) THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE
28 SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS
29 INCLUDED IN THE REQUEST FOR PROPOSALS.

30 (c) A LIST THAT CONTAINS THE NAME OF EACH OFFEROR THAT SUBMITTED A
31 PROPOSAL AND THAT SHOWS THE OFFEROR'S FINAL OVERALL SCORE.

32 (d) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE ON EACH FACTOR
33 IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS OF EACH OFFEROR THAT
34 SUBMITTED A PROPOSAL AND THAT SUPPORT THE FINAL OVERALL SCORES OF THE
35 OFFERORS THAT SUBMITTED PROPOSALS. AT THE ELECTION OF THE AGENT, THIS
36 DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
37 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
38 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
39 AGENT.

40 H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL
41 BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

42 1. NOTWITHSTANDING TITLE 39, CHAPTER 1, ARTICLE 2, UNTIL CONTRACT
43 AWARD BY AN AGENT OF ALL OF THE MULTIPLE CONTRACTS IN THE PROCUREMENT OR
44 TERMINATION OF THE PROCUREMENT BY THE AGENT, ONLY THE NAME OF EACH PERSON OR
45 FIRM ON THE FINAL LIST DEVELOPED PURSUANT TO SUBSECTION C OF THIS SECTION MAY

1 BE MADE AVAILABLE TO THE PUBLIC AND ALL OTHER INFORMATION RECEIVED BY THE
2 AGENT IN RESPONSE TO THE REQUEST FOR QUALIFICATIONS UNDER SUBSECTION C OF
3 THIS SECTION OR CONTAINED IN PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS
4 SECTION SHALL BE CONFIDENTIAL IN ORDER TO AVOID DISCLOSURE OF THE CONTENTS
5 THAT MAY BE PREJUDICIAL TO COMPETING SUBMITTERS AND OFFERORS DURING THE
6 SELECTION PROCESS.

7 2. AFTER THE AGENT AWARDS ALL OF THE MULTIPLE CONTRACTS IN THE
8 PROCUREMENT OR TERMINATES THE PROCUREMENT, THE AGENT SHALL MAKE AVAILABLE TO
9 THE PUBLIC PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2 AT A MINIMUM ALL OF THE
10 ITEMS THAT THE AGENT IS REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS
11 SECTION, EXCEPT THE PROPOSALS SUBMITTED IN RESPONSE TO A REQUEST FOR
12 PROPOSALS UNDER SUBSECTION F OF THIS SECTION AND THE DOCUMENT OR DOCUMENTS
13 PRESCRIBED IN SUBSECTION G, PARAGRAPH 1, SUBDIVISION (a), ITEM (v) AND
14 SUBDIVISION (b), ITEMS (v) AND (viii) AND PARAGRAPH 2, SUBDIVISION (d) OF
15 THIS SECTION.

16 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
17 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE AGENT HAS ENTERED INTO A
18 CONTRACT FOR ALL OF THE MULTIPLE CONTRACTS IN THE PROCUREMENT OR THE AGENT
19 HAS TERMINATED THE PROCUREMENT. AT A MINIMUM THE PROPOSALS SUBMITTED UNDER
20 SUBSECTION F OF THIS SECTION THAT THE AGENT IS REQUIRED TO RETAIN UNDER
21 SUBSECTION G OF THIS SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC AFTER THE
22 AGENT HAS ENTERED INTO A CONTRACT FOR ALL OF THE CONTRACTS IN THE PROCUREMENT
23 OR THE AGENT HAS TERMINATED THE PROCUREMENT.

24 4. TO THE EXTENT THAT THE OFFEROR DESIGNATES AND THE AGENT CONCURS,
25 TRADE SECRETS AND OTHER PROPRIETARY DATA CONTAINED IN A PROPOSAL SHALL REMAIN
26 CONFIDENTIAL.

27 5. THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
28 SUBDIVISION (a), ITEM (v) AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
29 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION ARE AVAILABLE TO THE EXTENT
30 PROVIDED IN TITLE 39, CHAPTER 1, ARTICLE 2.

31 I. AN AGENT MAY CANCEL A REQUEST FOR QUALIFICATIONS OR A REQUEST FOR
32 PROPOSALS, REJECT IN WHOLE OR IN PART ANY OR ALL SUBMITTALS OR PROPOSALS, OR
33 DETERMINE NOT TO ENTER INTO ONE OR MORE OF THE MULTIPLE CONTRACTS AS
34 SPECIFIED IN THE SOLICITATION IF THE AGENT DETERMINES IN ITS ABSOLUTE AND
35 SOLE DISCRETION THAT SUCH ACTION IS IN THE BEST INTEREST OF THE AGENT. THE
36 AGENT SHALL MAKE THE REASONS FOR CANCELLATION, REJECTION OR DETERMINATION NOT
37 TO ENTER INTO CONTRACTS PART OF THE CONTRACT FILE.

38 J. IF THE AGENT DOES NOT HAVE A PROCUREMENT PROTEST POLICY AND
39 PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE AGENT, FOR
40 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION THE AGENT SHALL FOLLOW
41 THE PROCUREMENT PROTEST POLICY AND PROCEDURES OF THE DEPARTMENT OF
42 ADMINISTRATION. THE AGENT SHALL PROCESS ALL PROTESTS RELATING TO
43 PROCUREMENTS UNDER THIS SECTION.

44 K. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
45 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER

1 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
2 OF THOSE SERVICES.

3 34-605. Requirements applicable to construction services and
4 professional services and to contracts for
5 construction services and professional services:
6 definition

7 A. THE REQUIREMENTS PRESCRIBED IN THIS SECTION APPLY TO EACH CONTRACT
8 ENTERED INTO AS THE RESULT OF A PROCUREMENT UNDER SECTION 34-603, 34-604 OR
9 34-606 AND TO THE PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES INCLUDED IN
10 EACH PROCUREMENT UNDER SECTION 34-603, 34-604 OR 34-606.

11 B. IF A PROCUREMENT UNDER SECTION 34-603 IS FOR
12 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
13 CONSTRUCTION SERVICES TO BE CONTRACTED PURSUANT TO SECTION 34-603,
14 SUBSECTION E OR IF A PROCUREMENT UNDER SECTION 34-606 IS FOR
15 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
16 CONSTRUCTION SERVICES, THE AGENT SHALL ENTER INTO A WRITTEN CONTRACT WITH THE
17 CONTRACTOR FOR PRECONSTRUCTION SERVICES UNDER WHICH THE AGENT SHALL PAY THE
18 CONTRACTOR A FEE FOR PRECONSTRUCTION SERVICES IN AN AMOUNT AGREED BY THE
19 AGENT AND THE CONTRACTOR, AND THE AGENT SHALL NOT REQUEST OR OBTAIN A FIXED
20 PRICE OR A GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION FROM THE CONTRACTOR
21 OR ENTER INTO A CONSTRUCTION CONTRACT WITH THE CONTRACTOR UNTIL AFTER THE
22 AGENT HAS ENTERED INTO THE WRITTEN CONTRACT FOR PRECONSTRUCTION SERVICES AND
23 A PRECONSTRUCTION SERVICES FEE.

24 C. IF A CONTRACT FOR CONSTRUCTION SERVICES IS ENTERED INTO AS THE
25 RESULT OF A PROCUREMENT UNDER SECTION 34-603, 34-604 OR 34-606, CONSTRUCTION
26 SHALL NOT COMMENCE UNTIL THE AGENT AND CONTRACTOR AGREE IN WRITING ON EITHER
27 A FIXED PRICE THAT THE AGENT WILL PAY FOR THE CONSTRUCTION TO BE COMMENCED OR
28 A GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION TO BE COMMENCED.

29 D. A CONTRACT FOR PROFESSIONAL SERVICES ENTERED INTO AS THE RESULT OF
30 A PROCUREMENT UNDER SECTION 34-603, 34-604 OR 34-606 SHALL HAVE A TERM NOT
31 EXCEEDING FIVE YEARS AFTER THE DATE OF CONTRACT AWARD BY THE AGENT OF THE
32 FIRST CONTRACT UNDER THE PROCUREMENT, EXCEPT THAT THE CONTRACT MAY CONTINUE
33 IN EFFECT AFTER THE FIVE YEAR TERM FOR PROFESSIONAL SERVICES ON PROJECTS ON
34 WHICH THE RENDERING OF PROFESSIONAL SERVICES COMMENCES WITHIN THE FIVE YEAR
35 TERM.

36 E. NOTWITHSTANDING ANY OTHER LAW:

37 1. THE CONTRACTOR FOR DESIGN-BUILD OR JOB-ORDER-CONTRACTING
38 CONSTRUCTION SERVICES IS NOT REQUIRED TO BE REGISTERED TO PERFORM DESIGN
39 SERVICES PURSUANT TO TITLE 32, CHAPTER 1 IF THE PERSON OR FIRM ACTUALLY
40 PERFORMING THE DESIGN SERVICES ON BEHALF OF THE CONTRACTOR IS APPROPRIATELY
41 REGISTERED.

42 2. THE CONTRACTOR FOR CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD OR
43 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL BE LICENSED TO PERFORM
44 CONSTRUCTION PURSUANT TO TITLE 32, CHAPTER 10.

45 F. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ONLY:

1 1. THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER SHALL BE ONE
2 MILLION DOLLARS OR SUCH HIGHER OR LOWER AMOUNT PRESCRIBED BY THE AGENT IN AN
3 ACTION NOTICED PURSUANT TO TITLE 38, CHAPTER 3, ARTICLE 3.1 OR A RULE ADOPTED
4 BY THE AGENT AS THE MAXIMUM AMOUNT OF AN INDIVIDUAL JOB ORDER. REQUIREMENTS
5 SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN ORDER TO CONSTITUTE A JOB
6 ORDER THAT SATISFIES THIS REQUIREMENT.

7 2. IF THE CONTRACTOR SUBCONTRACTS OR INTENDS TO SUBCONTRACT PART OR
8 ALL OF THE WORK UNDER A JOB ORDER AND IF THE JOB-ORDER-CONTRACTING
9 CONSTRUCTION SERVICES CONTRACT INCLUDES DESCRIPTIONS OF STANDARD INDIVIDUAL
10 TASKS, STANDARD UNIT PRICES FOR STANDARD INDIVIDUAL TASKS AND PRICING OF JOB
11 ORDERS BASED ON THE NUMBER OF UNITS OF STANDARD INDIVIDUAL TASKS IN THE JOB
12 ORDER:

13 (a) THE CONTRACTOR HAS A DUTY TO DELIVER PROMPTLY TO EACH
14 SUBCONTRACTOR INVITED TO BID A COEFFICIENT TO THE CONTRACTOR TO DO ALL OR
15 PART OF THE WORK UNDER ONE OR MORE JOB ORDERS:

16 (i) A COPY OF THE DESCRIPTIONS OF ALL STANDARD INDIVIDUAL TASKS ON
17 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

18 (ii) A COPY OF THE STANDARD UNIT PRICES FOR THE INDIVIDUAL TASKS ON
19 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

20 (b) IF NOT PREVIOUSLY DELIVERED TO THE SUBCONTRACTOR, THE CONTRACTOR
21 HAS A DUTY TO DELIVER PROMPTLY THE FOLLOWING TO EACH SUBCONTRACTOR INVITED TO
22 OR THAT HAS AGREED TO DO ANY OF THE WORK INCLUDED IN ANY JOB ORDER:

23 (i) A COPY OF THE DESCRIPTION OF EACH STANDARD INDIVIDUAL TASK THAT IS
24 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

25 (ii) THE NUMBER OF UNITS OF EACH STANDARD INDIVIDUAL TASK THAT IS
26 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

27 (iii) THE STANDARD UNIT PRICE FOR EACH STANDARD INDIVIDUAL TASK THAT
28 IS INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO
29 PERFORM.

30 G. THE FOLLOWING APPLY TO HORIZONTAL CONSTRUCTION:

31 1. NOTWITHSTANDING THIS CHAPTER, AN AGENT SHALL NOT PROCURE ANY
32 HORIZONTAL CONSTRUCTION USING THE CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD
33 OR JOB-ORDER-CONTRACTING METHOD OF PROJECT DELIVERY AFTER JUNE 30, 2020. FOR
34 PURPOSES OF THIS PARAGRAPH, AN AGENT PROCURES HORIZONTAL CONSTRUCTION WHEN
35 THE CONTRACT FOR THE CONSTRUCTION SERVICES IS EXECUTED BY THE AGENT AND THE
36 CONTRACTOR FOR THE CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD OR
37 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES. IF A CONTRACT IS EXECUTED FOR
38 CONSTRUCTION SERVICES ON OR BEFORE JUNE 30, 2020, CONSTRUCTION SERVICES UNDER
39 THE CONTRACT MAY BE RENDERED IN WHOLE OR IN PART AFTER JUNE 30, 2020.

40 2. FOR EACH HORIZONTAL CONSTRUCTION PROJECT UNDER A DESIGN-BUILD OR
41 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES CONTRACT, THE LICENSED
42 CONTRACTOR PERFORMING THE CONTRACT SHALL PERFORM, WITH THE CONTRACTOR'S OWN
43 ORGANIZATION, CONSTRUCTION WORK THAT AMOUNTS TO NOT LESS THAN FORTY-FIVE PER
44 CENT OF THE TOTAL CONTRACT PRICE FOR THE CONSTRUCTION, EXCEPT THAT FOR LIGHT
45 RAIL THE SELF-PERFORMANCE PERCENTAGE SHALL BE NOT LESS THAN THIRTY PER CENT.

1 3. A PROJECT IS HORIZONTAL CONSTRUCTION IF MORE THAN ONE-HALF OF THE
2 TOTAL CONTRACT PRICE FOR THE CONSTRUCTION IS FOR HORIZONTAL CONSTRUCTION.
3 PROJECT ELEMENTS SHALL NOT BE ARTIFICIALLY ADDED IN ORDER TO MAKE A PROJECT
4 NOT HORIZONTAL CONSTRUCTION AND SHALL NOT BE ARTIFICIALLY DELETED IN ORDER TO
5 MAKE A PROJECT HORIZONTAL CONSTRUCTION.

6 4. THE TOTAL CONTRACT PRICE FOR THE CONSTRUCTION DOES NOT INCLUDE THE
7 COST OF PRECONSTRUCTION SERVICES, DESIGN SERVICES OR ANY OTHER RELATED
8 SERVICES OR THE COST TO PROCURE ANY RIGHT-OF-WAY OR OTHER COST OF
9 CONDEMNATION.

10 H. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION OR THIS
11 TITLE, AN AGENT SHALL NOT:

12 1. ENTER INTO A CONTRACT AS CONTRACTOR TO PROVIDE
13 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION
14 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

15 2. CONTRACT WITH ITSELF, WITH ANOTHER AGENT, WITH THIS STATE OR WITH
16 ANY OTHER GOVERNMENTAL UNIT OF THIS STATE OR THE FEDERAL GOVERNMENT FOR THE
17 AGENT TO PROVIDE CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES,
18 DESIGN-BUILD CONSTRUCTION SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION
19 SERVICES.

20 I. THE PROHIBITIONS PRESCRIBED IN SUBSECTION H OF THIS SECTION DO NOT
21 PROHIBIT AN AGENT FROM PROVIDING CONSTRUCTION FOR ITSELF AS PROVIDED BY LAW.

22 J. THE AGENT SHALL INCLUDE IN EACH CONTRACT FOR CONSTRUCTION SERVICES
23 THE FULL STREET OR PHYSICAL ADDRESS OF EACH SEPARATE LOCATION AT WHICH THE
24 CONSTRUCTION WILL BE PERFORMED AND A REQUIREMENT THAT THE CONTRACTOR AND EACH
25 SUBCONTRACTOR AT ANY LEVEL INCLUDE IN EACH OF ITS SUBCONTRACTS THE SAME
26 ADDRESS INFORMATION. THE CONTRACTOR AND EACH SUBCONTRACTOR AT ANY LEVEL
27 SHALL INCLUDE IN EACH SUBCONTRACT THE FULL STREET OR PHYSICAL ADDRESS OF EACH
28 SEPARATE LOCATION AT WHICH CONSTRUCTION WORK WILL BE PERFORMED.

29 K. THE FOLLOWING PROVISIONS APPLY TO ALL CONSTRUCTION SERVICES
30 PROCURED UNDER THIS CHAPTER:

31 1. THE CONTRACTOR PERFORMING THE CONSTRUCTION SERVICES IS PERMITTED TO
32 SELF-PERFORM PART OF THE CONSTRUCTION WORK IF AND TO THE EXTENT AGREED IN
33 WRITING BY THE AGENT AND THE CONTRACTOR. THE AGENT MAY USE METHODS OTHER
34 THAN COMPETITIVE BIDDING TO ASSURE ITSELF THAT THE PRICE THE AGENT PAYS TO
35 THE CONTRACTOR FOR SELF-PERFORMED WORK IS FAIR AND REASONABLE. PERMITTED
36 METHODS TO EVALUATE FAIRNESS AND REASONABLENESS OF THE PRICE OF
37 SELF-PERFORMED WORK INCLUDE EVALUATION OF THE CONTRACTOR'S PROPOSED SCOPE OF
38 WORK AND PRICE FOR SELF-PERFORMED WORK BY AN ESTIMATOR WHO IS HIRED AND PAID
39 BY THE AGENT, WHO IS INDEPENDENT OF THE CONTRACTOR AND WHO MAY BE AN EMPLOYEE
40 OF THE AGENT. ALTHOUGH THE AGENT MAY ELECT TO SO REQUIRE, NOTHING IN THIS
41 CHAPTER, THIS TITLE OR ANY OTHER LAW SHALL BE CONSTRUED OR INTERPRETED TO
42 REQUIRE THE AGENT TO REQUIRE A CONTRACTOR DESIRING TO SELF-PERFORM PART OF
43 THE CONSTRUCTION WORK TO COMPETITIVELY BID THAT PART OF THE CONSTRUCTION WORK
44 AGAINST OTHER CONTRACTORS IN A BID COMPETITION.

1 2. THE FOLLOWING REQUIREMENTS APPLY TO THE CONSTRUCTION WORK TO BE
2 PERFORMED BY SUBCONTRACTORS AND DO NOT APPLY TO CONSTRUCTION WORK THAT THE
3 AGENT AND THE CONTRACTOR AGREE IN WRITING WILL BE SELF-PERFORMED BY THE
4 CONTRACTOR:

5 (a) THE PERSON OR FIRM SELECTED TO PERFORM THE CONSTRUCTION SERVICES
6 SHALL SELECT SUBCONTRACTORS BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION
7 OF QUALIFICATIONS AND PRICE AND SHALL NOT SELECT SUBCONTRACTORS BASED ON
8 PRICE ALONE. A QUALIFICATIONS AND PRICE SELECTION MAY BE A SINGLE-STEP
9 SELECTION BASED ON A COMBINATION OF QUALIFICATIONS AND PRICE OR A TWO-STEP
10 SELECTION. IN A TWO-STEP SELECTION, THE FIRST STEP SHALL BE BASED ON
11 QUALIFICATIONS ALONE AND THE SECOND STEP MAY BE BASED ON A COMBINATION OF
12 QUALIFICATIONS AND PRICE OR ON PRICE ALONE.

13 (b) THE AGENT SHALL INCLUDE IN EACH CONTRACT:

14 (i) IF THE AGENT INCLUDED ITS SUBCONTRACTOR SELECTION PLAN IN THE
15 REQUEST FOR QUALIFICATIONS, THE AGENT'S SUBCONTRACTOR SELECTION PLAN AND THE
16 PROCEDURES TO IMPLEMENT THE AGENT'S SUBCONTRACTOR SELECTION PLAN PROPOSED BY
17 THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS WITH THOSE
18 MODIFICATIONS TO THE PROCEDURES AS THE AGENT AND THE SELECTED PERSON OR FIRM
19 AGREE.

20 (ii) IF THE AGENT DID NOT INCLUDE ITS SUBCONTRACTOR SELECTION PLAN IN
21 THE REQUEST FOR QUALIFICATIONS, THE SUBCONTRACTOR SELECTION PLAN PROPOSED BY
22 THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS WITH THOSE
23 MODIFICATIONS AS THE AGENT AND THE SELECTED PERSON OR FIRM AGREE.

24 (c) IN MAKING THE SELECTION OF SUBCONTRACTORS, THE PERSON OR FIRM
25 SELECTED TO PERFORM THE CONSTRUCTION SERVICES SHALL USE THE SUBCONTRACTOR
26 SELECTION PLAN AND ANY PROCEDURES INCLUDED IN ITS CONTRACT.

27 L. IF THE AGENT DOES NOT HAVE A PROCUREMENT PROTEST POLICY AND
28 PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE AGENT, FOR
29 PROTESTS RELATING TO PROCUREMENTS UNDER THIS CHAPTER THE AGENT SHALL FOLLOW
30 THE PROCUREMENT PROTEST POLICY AND PROCEDURES OF THE DEPARTMENT OF
31 ADMINISTRATION. THE AGENT SHALL PROCESS ALL PROTESTS RELATING TO
32 PROCUREMENTS UNDER THIS SECTION. IF THE AGENT DOES HAVE A PROCUREMENT
33 PROTEST POLICY AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED
34 BY THE AGENT, THE AGENT MAY CHOOSE TO MAKE INFORMATION RELATING TO EACH
35 PROCUREMENT AVAILABLE EARLIER THAN REQUIRED UNDER SECTION 34-603, SUBSECTION
36 H AND SECTION 34-604, SUBSECTION H IF THE AGENT DETERMINES THE RELEASE OF THE
37 INFORMATION IS NECESSARY TO ADEQUATELY FOLLOW AND MANAGE ITS PROCUREMENT
38 PROTEST POLICY AND PROCEDURES.

39 M. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
40 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
41 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
42 OF THOSE SERVICES.

1 Sec. 16. Section 34-608, Arizona Revised Statutes, as renumbered by
2 this act, is amended to read:

3 34-608. Bid security for design-build and job-order-contracting
4 construction services

5 A. As a guarantee that the contractor will enter into a contract, bid
6 security is required for all design-build construction services and all
7 job-order-contracting construction services awarded by an agent by
8 competitive sealed proposals pursuant to section 34-603, subsection F OR
9 34-604, SUBSECTION F if the agent estimates that the budget for construction,
10 excluding the cost of any finance services, maintenance services, operations
11 services, design services, preconstruction services or other related
12 services, will be more than the amount prescribed in section 41-2535,
13 subsection D. Each proposal for design-build construction services or
14 job-order-contracting construction services shall be accompanied by a
15 certified check, cashier's check or surety bond. The bid security amount for
16 design-build construction services shall be an amount equal to ten per cent
17 of the agent's budget for construction, excluding any finance services,
18 maintenance services, operations services, design services, preconstruction
19 services or other related services, for the project as stated in the request
20 for proposals. The bid security amount for job-order-contracting
21 construction services shall be the amount determined by the agent and stated
22 in the request for proposals and shall not be more than ten per cent of the
23 agent's reasonably estimated budget for construction that the agent believes
24 is likely to actually be done during the first year of the
25 job-order-contracting contract, excluding any finance services, maintenance
26 services, operations services, design services, preconstruction services or
27 other related services that are included in the contract.

28 B. The agent shall return the certified check, cashier's check or
29 surety bond to the contractors whose proposals are not accepted and to the
30 successful contractor on the execution of satisfactory payment and
31 performance bonds, insurance and the contract as provided in this chapter.

32 C. Notwithstanding any other statute, the surety bond shall be
33 executed solely by a surety company or companies holding a certificate of
34 authority to transact surety business in this state issued by the director of
35 the department of insurance pursuant to title 20, chapter 2, article 1. The
36 bond shall not be executed by an individual surety or sureties, even if the
37 requirements of section 7-101 are satisfied.

38 D. The conditions and provisions of the surety bond regarding the
39 surety's obligations shall follow the following form:

40 Now, therefore, if the obligee accepts the proposal of the
41 principal and the principal enters into a contract with the
42 obligee in accordance with the terms of the proposal and gives
43 the bonds and certificates of insurance as specified in the
44 standard specifications with good and sufficient surety for the
45 faithful performance of the contract and for the prompt payment

1 of labor and materials furnished in the prosecution of the
2 contract, or in the event of the failure of the principal to
3 enter into the contract and give the bonds and certificates of
4 insurance, if the principal pays to the obligee the difference
5 not to exceed the penalty of the bond between the amount
6 specified in the proposal and any larger amount for which the
7 obligee may contract in good faith with another party to perform
8 the work covered by the proposal, this obligation is void.
9 Otherwise it remains in full force and effect. Provided,
10 however, that this bond is executed pursuant to section ~~34-606~~
11 34-608, Arizona Revised Statutes, and all liabilities on this
12 bond shall be determined in accordance with the provisions of
13 the section to the extent as if it were copied at length in this
14 agreement.

15 E. If the request for proposals requires security, noncompliance
16 requires that the agent reject the proposal for noncompliance with the
17 security requirement, unless the agent determines that the bid fails to
18 comply in a nonsubstantial manner with the security requirements.

19 F. After the agent opens the proposals, the proposals are irrevocable
20 for the period specified in the request for proposals, except as provided in
21 section 34-603, subsection F OR SECTION 34-604, SUBSECTION F. If a proposer
22 is permitted to withdraw its proposal before award, no action may be had
23 against the proposer or the bid security.

24 G. All bonds given by a contractor and surety pursuant to this
25 section, regardless of their actual form, are deemed by law to be the form
26 required and set forth in this section.

27 Sec. 17. Section 34-610, Arizona Revised Statutes, as renumbered by
28 this act, is amended to read:

29 34-610. Construction-manager-at-risk, design-build and
30 job-order-contracting construction services surety
31 bond required; suit on bond; limitations

32 A. Except if specifically exempted by statute, before an agent
33 executes any contract with any person or firm for
34 construction-manager-at-risk construction services, design-build construction
35 services or job-order-contracting construction services, the person or firm
36 shall furnish to the agent entering into the contract the following bonds,
37 except that the bonds shall be furnished only on and at the same time as
38 execution of a contract or an amendment to a contract that commits the
39 contractor to provide construction for a fixed price, a guaranteed maximum
40 price or any other fixed amount within a designated time frame:

41 1. A performance bond in an amount equal to the full contract amount
42 conditioned on the faithful performance of the contract in accordance with
43 plans, specifications and conditions of the contract, except that:

44 (a) For job-order-contracting construction services, the performance
45 bond shall cover the full amount of construction under the

1 job-order-contracting construction services contract, shall not include any
2 design services, preconstruction services, finance services, maintenance
3 services, operations services or other related services included in the
4 contract, may be a single bond for the full term of the contract, a separate
5 bond for each year of a multiyear contract or a separate bond for each job
6 order, as determined by the agent, and, if a single bond for the full term of
7 the contract or a separate bond for each year of a multiyear contract, shall
8 initially be based on the agent's reasonable estimate of the amount of
9 construction that the agent believes is likely to actually be done during the
10 full term of the contract or during the particular year of a multiyear
11 contract, as applicable.

12 (b) For construction-manager-at-risk construction services and
13 design-build construction services, the amount of the performance bond shall
14 be the price of construction and shall not include the cost of any design
15 services, preconstruction services, finance services, maintenance services,
16 operations services or any other related services included in the contract.
17 The performance bond shall be solely for the protection of the public body
18 awarding the contract.

19 2. A payment bond in an amount equal to the full contract amount
20 solely for the protection of claimants supplying labor or materials to the
21 contractor or the contractor's subcontractors in the prosecution of the
22 construction and not for the protection of persons providing any design
23 services, preconstruction services, finance services, maintenance services,
24 operations services or other related services provided for in the contract,
25 except that:

26 (a) For job-order-contracting construction services, the payment bond
27 shall cover the full amount of construction under the job-order-contracting
28 construction services contract, shall not include any design services,
29 preconstruction services, finance services, maintenance services, operations
30 services or other related services included in the contract, may be a single
31 bond for the full term of the contract, a separate bond for each year of a
32 multiyear contract or a separate bond for each job order, as determined by
33 the agent, and, if a single bond for the full term of the contract or a
34 separate bond for each year of a multiyear contract, shall initially be based
35 on the agent's reasonable estimate of the amount of construction that the
36 agent believes is likely to actually be done during the full term of the
37 contract or during the particular year of a multiyear contract, as
38 applicable.

39 (b) For construction-manager-at-risk construction services and
40 design-build construction services, the amount of the payment bond shall be
41 the price of construction and shall not include the cost of any design
42 services, preconstruction services, finance services, maintenance services,
43 operations services or any other related services included in the contract.

1 B. Each bond shall include a provision allowing the prevailing party
2 in a suit on the bond to recover as a part of the judgment any reasonable
3 attorney fees as may be fixed by the court.

4 C. Notwithstanding any other statute, each bond shall be executed
5 solely by a surety company or companies holding a certificate of authority to
6 transact surety business in this state issued by the director of the
7 department of insurance pursuant to title 20, chapter 2, article 1. The
8 bonds shall not be executed by an individual surety or sureties, even if the
9 requirements of section 7-101 are satisfied. The bonds shall be payable to
10 the public body concerned.

11 D. The bonds shall be filed in the office of the department, board,
12 commission, institution, agency or other contracting body awarding the
13 contract.

14 E. It is illegal for a request for qualifications or a request for
15 proposals pursuant to section 34-603 OR 34-604, or any person acting or
16 purporting to act on behalf of the contracting body, to require that bonds be
17 furnished by a particular surety company, or through a particular agent or
18 broker.

19 F. The conditions and provisions in the payment bond regarding the
20 surety's obligations shall follow the following form:

21 Now, therefore, the condition of this obligation is that if the
22 principal promptly pays all monies due to all persons supplying
23 labor or materials to the principal or the principal's
24 subcontractors in the prosecution of the construction provided
25 for in the contract, this obligation is void. Otherwise it
26 remains in full force and effect. Provided, however, that this
27 bond is executed pursuant to title 34, chapter 6, Arizona
28 Revised Statutes, and all liabilities on this bond shall be
29 determined in accordance with the provisions, conditions and
30 limitations of title 34, chapter 6, Arizona Revised Statutes, to
31 the same extent as if they were copied at length in this
32 agreement. The prevailing party in a suit on this bond shall
33 recover as a part of the judgment reasonable attorney fees that
34 may be fixed by the court.

35 G. The conditions and provisions in the performance bond regarding the
36 surety's obligations shall follow the following form:

37 Now, therefore, the condition of this obligation is that if the
38 principal faithfully performs and fulfills all of the
39 undertakings, covenants, terms, conditions and agreements of the
40 contract during the original term of the contract and any
41 extension of the contract, with or without notice to the surety,
42 and during the life of any guaranty required under the contract,
43 and also performs and fulfills all of the undertakings,
44 covenants, terms, conditions and agreements of all duly
45 authorized modifications of the contract that may hereafter be

1 made, notice of which modifications to the surety being hereby
2 waived, the above obligation is void. Otherwise it remains in
3 full force and effect. Provided, however, that this bond is
4 executed pursuant to title 34, chapter 6, Arizona Revised
5 Statutes, and all liabilities on this bond shall be determined
6 in accordance with title 34, chapter 6, Arizona Revised
7 Statutes, to the extent as if it were copied at length in this
8 agreement. The prevailing party in a suit on this bond shall
9 recover as part of the judgment reasonable attorney fees that
10 may be fixed by the court. The performance under this bond is
11 limited to the construction to be performed under the contract
12 and does not include any design services, preconstruction
13 services, finance services, maintenance services, operations
14 services or any other related services included in the contract.

15 H. If the prime contract or specifications require any persons
16 supplying labor or materials in the prosecution of the work to furnish
17 payment or performance bonds, these bonds shall be executed solely by a
18 surety company or companies holding a certificate of authority to transact
19 surety business in this state issued by the director of the department of
20 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding any
21 other statute, the bonds shall not be executed by an individual surety or
22 sureties, even if the requirements of section 7-101 are satisfied.

23 I. All bonds given by a contractor and surety pursuant to this
24 section, regardless of their actual form, are deemed by law to be in the form
25 required and set forth in this section.

26 Sec. 18. Section 34-611, Arizona Revised Statutes, as renumbered by
27 this act, is amended to read:

28 34-611. Payment bonds for construction-manager-at-risk,
29 design-build and job-order-contracting construction
30 services

31 A. Every claimant who has furnished labor or material in the
32 prosecution of the construction provided for in a contract for
33 construction-manager-at-risk construction services, design-build construction
34 services and job-order-contracting construction services in respect of which
35 a payment bond is furnished under section ~~34-608~~ 34-610, and who has not been
36 paid in full before the expiration of ninety days after the day on which the
37 last of the labor was done or performed by the claimant or material was
38 furnished or supplied by the claimant for which the claim is made, shall have
39 the right to sue on the payment bond for the amount, or the balance, unpaid
40 at the time of institution of the suit and to prosecute the action to final
41 judgment for the sums justly due the claimant, and have execution thereon,
42 provided, however, that any claimant having a direct contractual
43 relationship with a subcontractor of the contractor furnishing the payment
44 bond but no contractual relationship express or implied with the contractor
45 shall have a right of action on the payment bond on giving the contractor

1 only a written preliminary twenty day notice, as provided for in section
2 33-992.01, subsection C, paragraphs 1, 2, 3 and 4 and subsections E and H,
3 and on giving written notice to the contractor within ninety days from the
4 date on which the claimant performed the last of the labor or furnished or
5 supplied the last of the material for which the claim is made, stating with
6 substantial accuracy the amount claimed and the name of the party to whom the
7 material was furnished or supplied or for whom the labor was done or
8 performed. The notice shall be served by registered or certified mail,
9 postage prepaid, in an envelope addressed to the contractor at any place the
10 contractor maintains an office or conducts business, or at the contractor's
11 residence.

12 B. Every suit instituted under this section shall be brought in the
13 name of the claimant, but no suit may be commenced after the expiration of
14 one year from the date on which the last of the labor was performed or
15 materials were supplied by the person bringing this suit.

16 C. The contracting body and the agent in charge of its office shall
17 furnish to anyone making written application therefor and who states that it
18 has supplied labor or materials for work, and payment therefor has not been
19 made, or that it is being sued on any bond, or that it is the surety on the
20 bond, a certified copy of the bond and the contract for which it was given,
21 which copy is prima facie evidence of the contents, execution and delivery of
22 the original. Applicants shall pay for these certified copies such
23 reasonable fees as the contracting body or the agent in charge of its office
24 fixes to cover the actual cost of preparation of the copies.

25 Sec. 19. Section 41-2503, Arizona Revised Statutes, is amended to
26 read:

27 41-2503. Definitions

28 In this chapter, unless the context otherwise requires:

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

32 2. "Business" means any corporation, partnership, individual, sole
33 proprietorship, joint stock company, joint venture or other private legal
34 entity.

35 3. "Change order" means a written order which is signed by a
36 procurement officer and which directs the contractor to make changes that the
37 changes clause of the contract authorizes the procurement officer to order.

38 4. "Construction":

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

42 (b) Does not include:

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

1 (ii) The investigation, characterization, restoration or remediation
2 due to an environmental issue of existing facilities, structures, buildings
3 or real property.

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

6 (a) There is a separate contract for design services and a separate
7 contract for construction services, EXCEPT THAT INSTEAD OF A SINGLE CONTRACT
8 FOR CONSTRUCTION SERVICES, THE PURCHASING AGENCY MAY ELECT SEPARATE CONTRACTS
9 FOR PRECONSTRUCTION SERVICES DURING THE DESIGN PHASE, FOR CONSTRUCTION DURING
10 THE CONSTRUCTION PHASE AND FOR ANY OTHER CONSTRUCTION SERVICES.

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

13 (c) Design and construction of the project may be in sequential phases
14 or concurrent phases.

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

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

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

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

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

32 8. "Contract modification" means any written alteration in the terms
33 and conditions of any contract accomplished by mutual action of the parties
34 to the contract.

35 9. "Contractor" means any person who has a contract with a state
36 governmental unit.

37 10. "Data" means documented information, regardless of form or
38 characteristic.

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

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

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

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

43 (c) The second contract is for construction.

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

1 (e) Finance services, maintenance services and operations services are
2 not included.

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

4 (a) There is a single contract for design services and construction
5 services, EXCEPT THAT INSTEAD OF A SINGLE CONTRACT FOR DESIGN SERVICES AND
6 CONSTRUCTION SERVICES, THE PURCHASING AGENCY MAY ELECT SEPARATE CONTRACTS FOR
7 PRECONSTRUCTION SERVICES AND DESIGN SERVICES DURING THE DESIGN PHASE, FOR
8 CONSTRUCTION AND DESIGN SERVICES DURING THE CONSTRUCTION PHASE AND FOR ANY
9 OTHER CONSTRUCTION SERVICES.

10 (b) Design and construction of the project may be in sequential phases
11 or concurrent phases.

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

14 14. "Design requirements":

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

17 (i) The required features, functions, characteristics, qualities and
18 properties.

19 (ii) The anticipated schedule, including start, duration and
20 completion.

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

23 (b) May include:

24 (i) Drawings and other documents illustrating the scale and
25 relationship of the features, functions and characteristics of the project,
26 which shall all be prepared by an architect or engineer, as appropriate, who
27 is registered pursuant to section 32-121.

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

30 15. "Design services" means architect services, engineer services or
31 landscape architect services.

32 16. "Designee" means a duly authorized representative of the director.

33 17. "Director" means the director of the department of administration.

34 18. "Employee" means an individual drawing a salary from a state
35 governmental unit, whether elected or not, and any noncompensated individual
36 performing personal services for any state governmental unit.

37 19. "Engineer services" means those professional engineer services that
38 are within the scope of engineering practice as provided in title 32,
39 chapter 1.

40 20. "Finance services" means financing for a construction services
41 project.

42 21. "General services administration contract" means contracts awarded
43 by the United States government general services administration.

44 22. "Grant" means the furnishing of financial or other assistance,
45 including state funds or federal grant funds, by any state governmental unit

1 to any person for the purpose of supporting or stimulating educational,
2 cultural, social or economic quality of life.

3 23. "Job-order-contracting" means a project delivery method in which:

4 (a) The contract is a requirements contract for indefinite quantities
5 of construction.

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

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

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

14 25. "Maintenance services" means routine maintenance, repair and
15 replacement of existing facilities, structures, buildings or real property.

16 26. "Materials":

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

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

21 27. "Operations services" means routine operation of existing
22 facilities, structures, buildings or real property.

23 28. "Owner" means a state purchasing agency or state governmental unit.

24 29. "Person" means any corporation, business, individual, union,
25 committee, club, other organization or group of individuals.

26 30. "Preconstruction services" means ~~advice~~ SERVICES AND OTHER
27 ACTIVITIES during the design phase.

28 31. "Procurement":

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

31 (b) Includes all functions that pertain to obtaining any ~~material~~
32 MATERIALS, services, construction or construction services, including
33 description of requirements, selection and solicitation of sources,
34 preparation and award of contract, and all phases of contract administration.

35 32. "Procurement officer":

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

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

40 33. "Purchasing agency" means any state governmental unit which is
41 authorized by this chapter or rules adopted pursuant to this chapter, or by
42 way of delegation from the director, to enter into contracts.

1 34. "Services":

2 (a) Means the furnishing of labor, time or effort by a contractor or
3 subcontractor which does not involve the delivery of a specific end product
4 other than required reports and performance.

5 (b) Does not include employment agreements or collective bargaining
6 agreements.

7 ~~35. "Specific single project" means one or more facilities at a single
8 location, at a common location or, if for a similar purpose, at multiple
9 locations.~~

10 ~~36.~~ 35. "State governmental unit" means any department, commission,
11 council, board, bureau, committee, institution, agency, government
12 corporation or other establishment or official of the executive branch or
13 corporation commission of this state.

14 ~~37.~~ 36. "Subcontractor" means a person who contracts to perform work
15 or render service to a contractor or to another subcontractor as a part of a
16 contract with a state governmental unit.

17 ~~38.~~ 37. "Using agency" means any state governmental unit which
18 utilizes any materials, services or construction procured under this chapter.

19 Sec. 20. Section 41-2532, Arizona Revised Statutes, is amended to
20 read:

21 41-2532. Methods of source selection

22 Unless otherwise authorized by law, all state contracts shall be
23 awarded by competitive sealed bidding as provided in section 41-2533, except
24 as provided in sections 41-2534 through 41-2538 and sections 41-2553,
25 41-2554, 41-2558, 41-2559, 41-2572, 41-2578, 41-2579 and 41-2636.

26 Sec. 21. Section 41-2533, Arizona Revised Statutes, is amended to
27 read:

28 41-2533. Competitive sealed bidding

29 A. Contracts shall be awarded by competitive sealed bidding except as
30 otherwise provided in section 41-2532.

31 B. An invitation for bids shall be issued and shall include a purchase
32 description and all contractual terms and conditions applicable to the
33 procurement.

34 C. Adequate public notice of the invitation for bids shall be given a
35 reasonable time before the date set forth in the invitation for the opening
36 of bids, in accordance with rules adopted by the director. The notice may
37 include publication one or more times in a newspaper of general circulation a
38 reasonable time before bid opening. If the invitation for bids is for the
39 procurement of services other than those described in sections 41-2513, ~~and~~
40 41-2578 **AND 41-2579**, the notice shall include publication in a single
41 newspaper or in multiple newspapers within this state. The publication shall
42 be not less than two weeks before bid opening and shall be circulated within
43 the affected governmental jurisdiction. The notice may also be posted at a
44 designated site on a worldwide public network of interconnected computers.

1 D. Bids shall be opened publicly at the time and place designated in
2 the invitation for bids. The amount of each bid, and such other relevant
3 information as may be specified by rule, together with the name of each
4 bidder shall be recorded. This record shall be open to public inspection at
5 the bid opening in a manner prescribed by rule. The bids shall not be open
6 for public inspection until after a contract is awarded. To the extent the
7 bidder designates and the state concurs, trade secrets or other proprietary
8 data contained in the bid documents shall remain confidential in accordance
9 with rules adopted by the director.

10 E. Bids shall be unconditionally accepted without alteration or
11 correction, except as authorized in this chapter. Bids shall be evaluated
12 based on the requirements set forth in the invitation for bids, including
13 criteria to determine acceptability such as inspection, testing, quality,
14 workmanship, delivery and suitability for a particular purpose, as prescribed
15 in rules adopted by the director. The invitation for bids shall set forth
16 the evaluation criteria to be used, including the weighting of identified
17 criteria. Evaluation criteria shall not be used for construction and no
18 criteria may be used in bid evaluation that are not set forth in the
19 invitation for bids.

20 F. The correction or withdrawal of erroneous bids before or after bid
21 opening, based on bid mistakes, may be permitted in accordance with rules
22 adopted by the director. After bid opening, no corrections in bid prices or
23 other provisions of bids prejudicial to the interest of this state or fair
24 competition shall be permitted. Except as otherwise provided by rule, all
25 decisions to permit the correction or withdrawal of bids, or to cancel awards
26 or contracts based on bid mistakes, shall be supported by a written
27 determination made by the director.

28 G. The contract shall be awarded to the lowest responsible and
29 responsive bidder whose bid conforms in all material respects to the
30 requirements and criteria set forth in the invitation for bids. The amount
31 of any applicable transaction privilege or use tax of a political subdivision
32 of this state is not a factor in determining the lowest bidder. If all bids
33 for a construction project exceed available monies as certified by the
34 appropriate fiscal officer, and the low responsive and responsible bid does
35 not exceed such monies by more than five per cent, the director may in
36 situations in which time or economic considerations preclude resolicitation
37 of work of a reduced scope negotiate an adjustment of the bid price,
38 including changes in the bid requirements, with the low responsive and
39 responsible bidder, to bring the bid within the amount of available monies.

40 H. The multistep sealed bidding method may be used if the director
41 determines in writing that it is not ~~practical~~ PRACTICABLE to initially
42 prepare a definitive purchase description which is suitable to permit an
43 award based on competitive sealed bidding. An invitation for bids may be
44 issued requesting the submission of technical offers to be followed by an
45 invitation for bids limited to those bidders whose offers are determined to

1 be technically acceptable under the criteria set forth in the first
2 solicitation, except that the multistep sealed bidding method may not be used
3 for construction contracts.

4 I. If the price of a recycled paper product which conforms to
5 specifications is within five per cent of a low bid product which is not
6 recycled and the recycled product bidder is otherwise the lowest responsible
7 and responsive bidder, the award shall be made to the bidder offering the
8 recycled product. The director may adopt rules requiring a five per cent
9 preference for other products made from recycled materials.

10 Sec. 22. Section 41-2534, Arizona Revised Statutes, is amended to
11 read:

12 41-2534. Competitive sealed proposals

13 A. If, under rules adopted pursuant to this chapter, the director
14 determines in writing that the use of competitive sealed bidding is either
15 not practicable or not advantageous to this state, a contract for materials
16 or services may be entered into by competitive sealed proposals. This
17 section does not apply to procurement of construction, construction services
18 or specified professional services pursuant to section ~~41-2537~~, 41-2578,
19 ~~subsection A 41-2579 OR 41-2581~~. Construction services shall be procured
20 pursuant to section 41-2537, ~~or~~ 41-2578, 41-2579 OR 41-2581. The director
21 may provide by rule that it is either not practicable or not advantageous to
22 this state to procure specified types of materials or services by competitive
23 sealed bidding.

24 B. Proposals shall be solicited through a request for proposals.

25 C. Adequate public notice of the request for proposals shall be given
26 in the same manner as provided in section 41-2533.

27 D. Proposals shall be opened publicly at the time and place designated
28 in the request for proposals. The name of each offeror and such other
29 relevant information as is specified by rule shall be publicly read and
30 recorded in accordance with rules adopted by the director. All other
31 information contained in the proposals shall be confidential so as to avoid
32 disclosure of contents prejudicial to competing offerors during the process
33 of negotiation. The proposals shall be open for public inspection after
34 contract award. To the extent the offeror designates and the state concurs,
35 trade secrets or other proprietary data contained in the offer documents
36 shall remain confidential in accordance with rules adopted by the director.

37 E. The request for proposals shall state the relative importance of
38 price and other evaluation factors. Specific numerical weighting is not
39 required.

40 F. As provided in the request for proposals, and under rules adopted
41 by the director, discussions may be conducted with responsible offerors who
42 submit proposals determined to be reasonably susceptible to being selected
43 for award for the purpose of clarification to ~~assure~~ ENSURE full
44 understanding of the solicitation requirements and to permit revision of
45 offers. Offerors shall be accorded fair treatment with respect to any

1 opportunity for discussion. Revisions may be permitted after submission and
 2 before award. If discussions are conducted, all offerors who have submitted
 3 proposals that are determined by the procurement officer to be in the
 4 competitive range shall be invited to submit a final proposal revision. In
 5 conducting discussions, there shall be no disclosure of any information
 6 derived from proposals submitted by competing offerors.

7 G. The award shall be made to the responsible offeror whose proposal is
 8 determined in writing to be the most advantageous to this state taking into
 9 consideration the evaluation factors set forth in the request for proposals.
 10 No other factors or criteria may be used in the evaluation. The amount of
 11 any applicable transaction privilege or use tax of a political subdivision of
 12 this state is not a factor in determining the most advantageous proposal.
 13 The contract file shall contain the basis on which the award is made.

14 Sec. 23. Section 41-2537, Arizona Revised Statutes, is amended to
 15 read:

16 41-2537. Emergency procurements

17 Notwithstanding any other provision of this chapter, the director may
 18 make or authorize others to make emergency procurements if there exists a
 19 threat to public health, welfare, ~~or~~ or safety or if a situation exists which
 20 makes compliance with section 41-2533, 41-2534, ~~or~~ 41-2578, 41-2579 OR
 21 41-2581 impracticable, unnecessary or contrary to the public interest as
 22 defined in rules adopted by the director, except that such emergency
 23 procurements shall be made with such competition as is practicable under the
 24 circumstances. A written determination of the basis for the emergency and
 25 for the selection of the particular contractor shall be included in the
 26 contract file.

27 Sec. 24. Section 41-2573, Arizona Revised Statutes, is amended to
 28 read:

29 41-2573. Bid security

30 A. As a guarantee that the contractor will enter into a contract, bid
 31 security is required for all construction procured pursuant to section
 32 41-2533 and all construction services procured pursuant to section 41-2578,
 33 subsection F OR SECTION 41-2579, SUBSECTION F if the purchasing agency
 34 estimates that the budget for construction, excluding the cost of any finance
 35 services, maintenance services, operations services, design services,
 36 preconstruction services or other related services included in the contract,
 37 will be more than the amount established by section 41-2535, subsection D.
 38 Bid security shall be a certified check, cashier's check or surety bond.

39 B. Bid security shall be submitted in the following amounts:

40 1. For design-bid-build construction services, ten per cent of the
 41 contractor's bid.

42 2. For design-build construction services awarded by competitive
 43 sealed proposals pursuant to section 41-2578, subsection F OR SECTION
 44 41-2579, SUBSECTION F, ten per cent of the purchasing agency's construction
 45 budget for the project as stated in the request for proposals, excluding

1 finance services, maintenance services, operations services, design services,
2 preconstruction services or any other related services included in the
3 contract.

4 3. For job-order-contracting construction services awarded by
5 competitive sealed proposals pursuant to section 41-2578, subsection F **OR**
6 **SECTION 41-2579, SUBSECTION F**, the amount prescribed by the purchasing agency
7 in the request for proposals, but not more than ten per cent of the
8 purchasing agency's reasonably estimated budget for construction that the
9 purchasing agency believes is likely to actually be done during the first
10 year under the contract, excluding any finance services, maintenance
11 services, operations services, design services, preconstruction services or
12 other related services included in the contract.

13 C. Nothing in this section prevents a state governmental unit from
14 requiring such bid security in relation to any construction contract. The
15 surety bond shall be executed and furnished as required by title 34, chapter
16 2 or chapter 6, as applicable, and the conditions and provisions of the
17 surety bond regarding the surety's obligations shall follow the form required
18 by section 34-201 or ~~34-606~~ **34-608**, as applicable.

19 D. If the invitation for bids or request for proposals requires
20 security, noncompliance requires that the bid be rejected unless, pursuant to
21 rules, it is determined that the bid fails to comply in a nonsubstantial
22 manner with the security requirements.

23 E. After the bids or proposals are opened, they are irrevocable for
24 the period specified in the invitation for bids or request for proposals,
25 except as provided in section 41-2533, subsection F, ~~and~~ section 41-2578,
26 subsection F **AND SECTION 41-2579, SUBSECTION F**. If a bidder is permitted to
27 withdraw its bid before award, no action may be had against the bidder or the
28 bid security.

29 Sec. 25. Section 41-2574, Arizona Revised Statutes, is amended to
30 read:

31 **41-2574. Contract performance and payment bonds**

32 A. The following bonds or security is required and is binding on the
33 parties to the contract if the value of a construction award exceeds the
34 amount established by section 41-2535:

35 1. A performance bond that is executed and furnished as required under
36 title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount
37 equal to one hundred per cent of the price specified in the contract
38 conditioned on the faithful performance of the contract in accordance with
39 the plans, specifications and conditions of the contract, except that:

40 (a) For job-order-contracting construction services, the performance
41 bond shall cover the full amount of construction under the
42 job-order-contracting construction services contract, shall not include any
43 design services, preconstruction services, finance services, maintenance
44 services, operations services or other related services included in the
45 contract, may be a single bond for the full term of the contract, a separate

1 bond for each year of a multiyear contract or a separate bond for each job
2 order, as determined by the purchasing agency, and, if a single bond for the
3 full term of the contract or a separate bond for each year of a multiyear
4 contract, shall initially be based on the purchasing agency's reasonable
5 estimate of the amount of construction that the purchasing agency believes is
6 likely to actually be done during the full term of the contract or during the
7 particular year of a multiyear contract, as applicable.

8 (b) For construction-manager-at-risk construction services and
9 design-build construction services, the amount of the performance bond shall
10 be the price of construction and shall not include the cost of any design
11 services, preconstruction services, finance services, maintenance services,
12 operations services and other related services included in the contract.
13 This bond is solely for the protection of this state. The conditions and
14 provisions of the performance bond regarding the surety's obligations shall
15 follow the form required under section 34-222, subsection G or section ~~34-608~~
16 ~~34-610~~, subsection G, as applicable.

17 2. A payment bond that is executed and furnished as required by title
18 34, chapter 2, article 2 or chapter 6, as applicable, in an amount equal to
19 one hundred per cent of the price specified in the contract for the
20 protection of all persons supplying labor or material to the contractor or
21 its subcontractors for the performance of the construction provided for in
22 the contract, except that:

23 (a) For job-order-contracting construction services, the payment bond
24 shall cover the full amount of construction under the job-order-contracting
25 construction services contract, shall not include any design services,
26 preconstruction services, finance services, maintenance services, operations
27 services or other related services included in the contract, may be a single
28 bond for the full term of the contract, a separate bond for each year of a
29 multiyear contract or a separate bond for each job order, as determined by
30 the purchasing agency, and, if a single bond for the full term of the
31 contract or a separate bond for each year of a multiyear contract, shall
32 initially be based on the purchasing agency's reasonable estimate of the
33 amount of construction that the purchasing agency believes is likely to
34 actually be done during the full term of the contract or during the
35 particular year of a multiyear contract, as applicable.

36 (b) For construction-manager-at-risk construction services and
37 design-build construction services, the amount of the payment bond shall be
38 the price of construction and shall not include the cost of any design
39 services, preconstruction services, finance services, maintenance services,
40 operations services or other related services included in the contract. The
41 conditions and provisions of the payment bond regarding the surety's
42 obligations shall follow the form required under section 34-222, subsection F
43 or section ~~34-608~~ ~~34-610~~, subsection F, as applicable.

44 B. For design-bid-build construction, the bonds prescribed in
45 subsection A of this section shall be provided on and at the same time as

1 execution of the construction contract. For construction-manager-at-risk,
 2 design-build and job-order-contracting construction services, the bonds
 3 prescribed in subsection A of this section shall be provided only on and at
 4 the same time as execution of a contract or an amendment to a contract that
 5 commits the contractor to provide construction for a fixed price, guaranteed
 6 maximum price or other fixed amount within a designated time frame.

7 C. If the prime contract or specifications require any persons
 8 supplying labor or materials in the prosecution of the work to furnish
 9 payment or performance bonds, these bonds shall be executed solely by a
 10 surety company or companies holding a certificate of authority to transact
 11 surety business in this state issued by the director of the department of
 12 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding the
 13 provisions of any other statute, the bonds shall not be executed by an
 14 individual surety or sureties, even if the requirements of section 7-101 are
 15 satisfied.

16 Sec. 26. Section 41-2578, Arizona Revised Statutes, is amended to
 17 read:

18 41-2578. Procurement of specified professional and construction
 19 services; definition

20 A. EXCEPT AS AUTHORIZED BY SECTIONS 41-2535, 41-2536, 41-2537 AND
 21 41-2581, A SINGLE CONTRACT FOR architect services, assayer services,
 22 construction-manager-at-risk construction services, design-build construction
 23 services, engineer services, job-order-contracting construction services,
 24 geologist services, landscape architect services and land surveying services
 25 shall be procured as provided in this section ~~except as authorized by~~
 26 ~~sections 41-2535, 41-2536 and 41-2537.~~

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 ~~contracts~~ THE SINGLE
 30 CONTRACT on the basis of demonstrated competence and qualifications for the
 31 type of professional services or construction services pursuant to procedures
 32 prescribed in this section.

33 C. In the procurement of ~~these~~ A SINGLE CONTRACT FOR professional
 34 services or construction services pursuant to this section:

35 ~~1. For procurement of professional services if the contract is for~~
 36 ~~professional services by an architect or architect firm and the contract~~
 37 ~~amount is two hundred fifty thousand dollars or less or is for professional~~
 38 ~~services by a person or firm other than an architect and the contract amount~~
 39 ~~is five hundred thousand dollars or less, the director shall encourage~~
 40 ~~persons or firms engaged in the lawful practice of the profession to submit~~
 41 ~~annually a statement of qualifications and experience. The director or the~~
 42 ~~head of the purchasing agency shall initiate an appropriately qualified~~
 43 ~~selection committee for each procurement, which may include one or more~~
 44 ~~contracts, in accordance with rules adopted by the director or purchasing~~
 45 ~~agency. The selection committee shall evaluate current statements of~~

1 ~~qualifications and experience on file with the director or purchasing agency,~~
2 ~~together with those that may be submitted by other persons or firms regarding~~
3 ~~the procurement. If possible, the selection committee shall conduct~~
4 ~~interviews with at least three persons or firms regarding the procurement and~~
5 ~~the relative methods of furnishing the required services and, if possible,~~
6 ~~shall select, in order of preference and based on criteria established and~~
7 ~~published by the selection committee, a separate final list for each contract~~
8 ~~being procured of at least three of the persons or firms deemed to be the~~
9 ~~most qualified to provide the services required. The selection committee~~
10 ~~shall base the selection of each final list and the order of preference on~~
11 ~~demonstrated competence and qualifications only. The purchasing agency and~~
12 ~~the selection committee shall not request or consider fees, price, man-hours~~
13 ~~or any other cost information at any point in the selection process under~~
14 ~~this paragraph, including the selection of the persons or firms to be~~
15 ~~interviewed, the selection of the persons and firms to be on a final list, in~~
16 ~~determining the order of preference of persons and firms on a final list or~~
17 ~~for any other purpose in the selection process. For each contract for~~
18 ~~professional services included in the procurement, the procurement officer~~
19 ~~shall enter into separate negotiations for the contract with the highest~~
20 ~~qualified person or firm on the final list for the contract. The~~
21 ~~negotiations shall include consideration of compensation and other contract~~
22 ~~terms that the procurement officer determines to be fair and reasonable to~~
23 ~~this state. In making this determination, the procurement officer shall take~~
24 ~~into account the estimated value, the scope, the complexity and the nature of~~
25 ~~the professional services to be rendered. If the procurement officer is~~
26 ~~unable to negotiate a satisfactory contract with the highest qualified person~~
27 ~~or firm on the final list for the contract at a price and on other contract~~
28 ~~terms the procurement officer determines to be fair and reasonable to this~~
29 ~~state, the procurement officer shall formally terminate negotiations with~~
30 ~~that person or firm. The procurement officer may undertake negotiations with~~
31 ~~the next most qualified person or firm on the final list for the contract in~~
32 ~~sequence until an agreement is reached or a determination is made to reject~~
33 ~~all persons or firms on the final list for the contract.~~

34 ~~2. For professional services if the contract amount is more than two~~
35 ~~hundred fifty thousand dollars for professional services by an architect or~~
36 ~~architect firm or five hundred thousand dollars for professional services by~~
37 ~~a person or firm other than an architect and for all construction services,~~
38 ~~the purchasing agency shall follow the procedure prescribed in this paragraph~~
39 ~~and paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of this subsection.~~
40 ~~Notwithstanding paragraph 1 of this subsection, for professional services~~
41 ~~otherwise subject to paragraph 1 of this subsection, the purchasing agency~~
42 ~~may elect to follow the procedures prescribed in this paragraph and~~
43 ~~paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of this subsection.~~

1 1. THE FOLLOWING REQUIREMENTS APPLY:

2 (a) THE PURCHASING AGENCY AND THE SELECTION COMMITTEE SHALL NOT
3 REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT
4 ANY POINT IN THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION
5 D OF THIS SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE
6 INTERVIEWED, THE SELECTION OF PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN
7 DETERMINING THE ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR
8 FOR ANY OTHER PURPOSE IN THE SELECTION PROCESS.

9 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
10 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON THE FINAL LIST
11 AND THEIR ORDER ON THE FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND
12 SHALL CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE
13 PURCHASING AGENCY FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER
14 FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER
15 ACTIONS.

16 (c) A PURCHASING AGENCY IS LIMITED TO ONE CONTRACT IN EACH PROCUREMENT
17 UNDER THIS SECTION. ALTERNATIVELY:

18 (i) FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, A
19 PURCHASING AGENCY MAY ELECT SEPARATE CONTRACTS FOR PRECONSTRUCTION SERVICES
20 DURING THE DESIGN PHASE, FOR CONSTRUCTION DURING THE CONSTRUCTION PHASE AND
21 FOR ANY OTHER CONSTRUCTION SERVICES.

22 (ii) FOR DESIGN-BUILD CONSTRUCTION SERVICES, A PURCHASING AGENCY MAY
23 ELECT SEPARATE CONTRACTS FOR PRECONSTRUCTION SERVICES AND DESIGN SERVICES
24 DURING THE DESIGN PHASE, FOR CONSTRUCTION AND DESIGN SERVICES DURING THE
25 CONSTRUCTION PHASE AND FOR ANY OTHER CONSTRUCTION SERVICES.

26 (iii) FOR PROFESSIONAL SERVICES, A PURCHASING AGENCY MAY ENTER INTO
27 MULTIPLE CONTRACTS FOR DIFFERENT PHASES OF A SINGLE PROJECT.

28 (d) ALL CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR
29 DESIGN-BUILD CONSTRUCTION SERVICES INCLUDED IN A PROCUREMENT UNDER THIS
30 SECTION SHALL BE LIMITED TO CONSTRUCTION SERVICES TO BE PERFORMED AT A SINGLE
31 LOCATION, A COMMON LOCATION OR, IF THE CONSTRUCTION SERVICES ARE ALL FOR A
32 SIMILAR PURPOSE, MULTIPLE LOCATIONS. FOR CONSTRUCTION-MANAGER-AT-RISK
33 CONSTRUCTION SERVICES AND DESIGN-BUILD CONSTRUCTION SERVICES TO BE PERFORMED
34 AT MULTIPLE LOCATIONS:

35 (i) AT THE TIME THE REQUEST FOR QUALIFICATIONS IS ISSUED, THE
36 PURCHASING AGENCY MUST INTEND TO COMMENCE ALL CONSTRUCTION SERVICES 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 (ii) THE REQUEST FOR QUALIFICATIONS MUST INCLUDE THE INFORMATION
41 DESCRIBED IN PARAGRAPH 2, SUBDIVISION (g) OF THIS SUBSECTION.

42 (e) IF THE PURCHASING AGENCY ENTERS INTO THE FIRST CONTRACT FOR
43 PRECONSTRUCTION SERVICES, CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES AS
44 THE RESULT OF THE PROCUREMENT, THE PROCUREMENT UNDER THIS SECTION ENDS.
45 AFTER EXECUTION OF THAT FIRST CONTRACT THE PURCHASING AGENCY MAY NOT USE THE

1 PROCUREMENT OR THE EXISTING FINAL LIST IN THE PROCUREMENT AS THE BASIS FOR
2 ENTERING INTO A CONTRACT WITH ANY OTHER PERSON OR FIRM THAT PARTICIPATED IN
3 THE PROCUREMENT.

4 (f) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
5 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
6 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

7 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
8 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT
9 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE
10 PROCUREMENT, THE PURCHASING AGENCY, AS THE PURCHASING AGENCY DETERMINES
11 NECESSARY OR APPROPRIATE, MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
12 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING
13 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE PURCHASING
14 AGENCY MAY ELECT TO TERMINATE THE PROCUREMENT.

15 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
16 CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS
17 SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS
18 TO THE REQUEST FOR QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT
19 OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM
20 REMAINS IN THE PROCUREMENT, THE DIRECTOR MAY ELECT TO PROCEED WITH THE
21 PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE DIRECTOR DETERMINES IN
22 WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS
23 FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD
24 REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A
25 RESOLICITATION.

26 (iii) IF A PERSON OR FIRM ON THE FINAL LIST WITHDRAWS OR IS REMOVED
27 FROM THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE
28 BEST INTEREST OF THE STATE, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON
29 OR FIRM ON THE FINAL LIST WITH ANOTHER PERSON OR FIRM THAT SUBMITTED
30 QUALIFICATIONS IN THE PROCUREMENT AND THAT IS SELECTED BY THE SELECTION
31 COMMITTEE AS THE NEXT MOST QUALIFIED.

32 2. THE PURCHASING AGENCY SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR
33 EACH PROCUREMENT AND GIVE ADEQUATE PUBLIC NOTICE OF THE REQUEST FOR
34 QUALIFICATIONS IN THE SAME MANNER AS PROVIDED IN SECTION 41-2533. THE
35 REQUEST FOR QUALIFICATIONS SHALL:

36 (a) STATE THAT ONE CONTRACT MAY OR WILL BE AWARDED, DESCRIBE THE
37 SERVICES TO BE PERFORMED UNDER THE CONTRACT AND STATE THAT ONE PERSON OR FIRM
38 MAY OR WILL BE AWARDED THE CONTRACT.

39 (b) IN A PROCUREMENT OF A CONTRACT TO BE NEGOTIATED UNDER SUBSECTION E
40 OF THIS SECTION, STATE THAT THERE WILL BE A SINGLE FINAL LIST OF AT LEAST
41 THREE AND NOT MORE THAN FIVE PERSONS OR FIRMS. IN A PROCUREMENT IN WHICH THE
42 CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS SECTION, STATE THAT THERE
43 WILL BE A SINGLE FINAL LIST AND THAT THE NUMBER OF PERSONS OR FIRMS ON THE
44 FINAL LIST WILL BE THREE.

1 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
2 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
3 EXCEPT THAT FOR CONSTRUCTION SERVICES ONE OF THE CRITERIA SHALL BE THE
4 PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR PROCEDURES TO IMPLEMENT
5 THE PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN. ALL SELECTION CRITERIA
6 UNDER THIS SUBSECTION SHALL BE FACTORS THAT DEMONSTRATE COMPETENCE AND
7 QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES
8 INCLUDED IN THE PROCUREMENT. IF:

9 (i) INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
10 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
11 BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND THE REQUEST
12 FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
13 THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON THE
14 FINAL LIST AND IN DETERMINING THEIR ORDER ON THE FINAL LIST. THE FINAL LIST
15 SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE SELECTION
16 CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR FIRMS TO BE
17 INTERVIEWED. THE REQUEST FOR QUALIFICATIONS ALSO SHALL STATE WHETHER THE
18 PURCHASING AGENCY WILL SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND
19 THEIR ORDER ON THE FINAL LIST SOLELY THROUGH THE RESULTS OF THE INTERVIEW
20 PROCESS OR THROUGH THE COMBINED RESULTS OF BOTH THE INTERVIEW PROCESS AND THE
21 EVALUATION OF STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA SUBMITTED IN
22 RESPONSE TO THE PURCHASING AGENCY'S REQUEST FOR QUALIFICATIONS.

23 (ii) INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
24 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
25 BE USED IN SELECTING THE PERSONS OR FIRMS ON THE FINAL LIST AND IN
26 DETERMINING THEIR ORDER ON THE FINAL LIST.

27 (d) IF THE PURCHASING AGENCY WILL HOLD INTERVIEWS AS PART OF THE
28 SELECTION PROCESS, STATE THAT INTERVIEWS WILL BE HELD AND THAT THE INTERVIEWS
29 WILL BE WITH AT LEAST THREE AND NO MORE THAN FIVE PERSONS OR FIRMS.

30 (e) FOR PROCUREMENTS OF CONSTRUCTION SERVICES, INCLUDE EITHER:

31 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
32 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
33 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
34 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
35 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

36 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE PURCHASING AGENCY
37 THAT APPLIES TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE
38 CONSTRUCTION SERVICES AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED
39 ON QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
40 NOT BASED ON PRICE ALONE AND A REQUIREMENT THAT EACH PERSON OR FIRM MUST
41 SUBMIT A DESCRIPTION OF THE PROCEDURES IT PROPOSES TO USE TO IMPLEMENT THE
42 PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN.

43 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
44 PURCHASING AGENCY'S PROTEST POLICY AND PROCEDURES OR, IF THE PURCHASING
45 AGENCY DOES NOT HAVE A PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE

1 PROTEST POLICY AND PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION
2 APPLY TO ANY PROTESTS IN CONNECTION WITH THE PROCUREMENT.

3 (g) IN A PROCUREMENT OF CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
4 SERVICES OR DESIGN-BUILD CONSTRUCTION SERVICES TO BE PERFORMED AT MULTIPLE
5 LOCATIONS, INCLUDE:

6 (i) A BRIEF DESCRIPTION OF THE CONSTRUCTION SERVICES TO BE PERFORMED
7 AT EACH LOCATION.

8 (ii) THE ESTIMATED BUDGET FOR THE CONSTRUCTION SERVICES TO BE
9 PERFORMED AT EACH LOCATION.

10 (iii) A SCHEDULE FOR THE CONSTRUCTION SERVICES TO BE PERFORMED AT EACH
11 LOCATION THAT SHOWS THE PURCHASING AGENCY'S INTENT TO COMMENCE ALL
12 CONSTRUCTION SERVICES AT EACH LOCATION WITHIN THIRTY MONTHS AFTER EXECUTION
13 OF THE FIRST CONTRACT FOR PRECONSTRUCTION SERVICES OR OTHER CONSTRUCTION
14 SERVICES AT ANY OF THE LOCATIONS.

15 3. The director or head of a purchasing agency shall initiate an
16 appropriately qualified selection committee for each request for
17 qualifications in accordance with rules adopted by the director. THE
18 DIRECTOR OR HEAD OF A PURCHASING AGENCY SHALL ENSURE THAT THE SELECTION
19 COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION COMMITTEE. EACH
20 SELECTION COMMITTEE MUST INCLUDE ONE EMPLOYEE OF THE PURCHASING AGENCY OR A
21 PURCHASING AGENCY REPRESENTATIVE APPOINTED BY THE PURCHASING AGENCY. If
22 procuring professional services, the purchasing agency shall determine the
23 number and qualifications of the selection committee members. A selection
24 committee for the procurement of construction services shall not have more
25 than seven members and shall include at least one person who is a senior
26 management employee of a licensed contractor and one person who is an
27 architect or an engineer who is registered pursuant to section 32-121. These
28 members may be employees of the purchasing agency or outside consultants.
29 Outside contractors, architects and engineers serving on a selection
30 committee shall not receive compensation from the purchasing agency for
31 performing this service, but the purchasing agency may elect to reimburse
32 outside contractors, architects and engineers for travel, lodging and other
33 expenses incurred in connection with service on a selection committee. A
34 person who is a member of a selection committee shall not be a contractor
35 under a contract awarded under the procurement or provide ANY PROFESSIONAL
36 SERVICES, construction, construction services, materials or OTHER services
37 under the contract. The selection committee AND THE PURCHASING AGENCY shall
38 DO THE FOLLOWING:

39 (a) Evaluate IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR
40 QUALIFICATIONS:

41 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSON OR FIRMS TO BE
42 INTERVIEWED BY EVALUATING the statements of qualifications and performance
43 data that are submitted in response to the purchasing agency's request for
44 qualifications BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF

1 THE SELECTION CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO
2 DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

3 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
4 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
5 ON THE FINAL LIST AND TO DETERMINE THEIR ORDER ON THE FINAL LIST ARE NOT
6 INCLUDED IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD
7 THE PURCHASING AGENCY SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE
8 INTERVIEWED THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
9 CRITERIA TO BE USED TO SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND TO
10 DETERMINE THEIR ORDER ON THE FINAL LIST. THESE SELECTION CRITERIA AND
11 RELATIVE WEIGHT MAY BE DIFFERENT THAN THE SELECTION CRITERIA AND RELATIVE
12 WEIGHT USED TO DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

13 ~~(b) If determined by the purchasing agency and included by the~~
14 ~~purchasing agency in the request for qualifications,~~

15 (iii) THE SELECTION COMMITTEE SHALL conduct interviews with at least
16 three but not more than five persons or firms as specified in the request for
17 qualifications regarding the professional services or construction services
18 and the relative methods of approach for furnishing the required professional
19 services or construction services. ~~, except that if multiple contracts are~~
20 ~~being procured under a single request for qualifications, the number to be~~
21 ~~interviewed shall be at least three and not more than the number of contracts~~
22 ~~plus two.~~

23 ~~(c) After any interviews, in order of preference, based on the~~
24 ~~criteria and the weighting of the criteria included in the request for~~
25 ~~qualifications, select a final list for each contract of three of the persons~~
26 ~~or firms the selection committee deems to be the most qualified to provide~~
27 ~~the professional services or construction services.~~

28 (b) BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
29 SELECTION CRITERIA SPECIFIED AS PROVIDED IN THIS SUBSECTION FOR SELECTION OF
30 THE PERSONS OR FIRMS ON THE FINAL LIST AND THEIR ORDER ON THE FINAL LIST, THE
31 SELECTION COMMITTEE SHALL SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST and,
32 in the case of A FINAL LIST FOR a contract that will be negotiated under
33 subsection E of this section, rank the three persons or firms on the final
34 list in order of preference. ~~The selection committee shall base the~~
35 ~~selection of the final list and the order of preference on demonstrated~~
36 ~~competence and qualifications only. If the request for qualifications~~
37 ~~solicited multiple contracts, the selection committee shall select a separate~~
38 ~~final list for each contract, except that if multiple contracts are being~~
39 ~~procured and if the request for qualifications specified that all of the~~
40 ~~multiple contracts will be awarded to a single contractor, the selection~~
41 ~~committee may select a single final list for all of the multiple contracts.~~
42 ~~If only two responsible and responsive persons or firms respond to the~~
43 ~~request for qualifications or if persons or firms withdraw from the~~
44 ~~procurement process so that there are only two responsible and responsive~~
45 ~~persons or firms remaining in the procurement process, the purchasing agency~~

1 ~~may elect to have the selection committee proceed with the procurement,~~
2 ~~including interviews and the final list, with those two persons or firms or~~
3 ~~the purchasing agency may readvertise pursuant to this subsection as the~~
4 ~~purchasing agency deems necessary or appropriate. If only one responsive and~~
5 ~~responsible person or firm responds to the request for qualifications or if~~
6 ~~persons or firms withdraw from the procurement process for a contract or~~
7 ~~multiple contracts to be negotiated under subsection E of this section so~~
8 ~~that only one responsive and responsible person or firm remains in the~~
9 ~~procurement process, the purchasing agency may elect to proceed with only one~~
10 ~~person or firm in the procurement process and may award the contract or~~
11 ~~contracts to a single person or firm if the purchasing agency determines in~~
12 ~~writing that the fee negotiated pursuant to subsection E of this section is~~
13 ~~fair and reasonable and either other prospective persons or firms had a~~
14 ~~reasonable opportunity to respond or there is not adequate time for a~~
15 ~~resolicitation. If a person or firm on the final list withdraws or is~~
16 ~~removed from the procurement process and the selection committee determines~~
17 ~~that it is in the best interest of the purchasing agency, the selection~~
18 ~~committee may replace that person or firm with another person or firm that~~
19 ~~submitted qualifications and that is selected by the selection committee as~~
20 ~~the next most qualified.~~

21 ~~(d) Base the selection of the final list and order of preference on~~
22 ~~the final list on demonstrated competence and qualifications only.~~

23 ~~3. The purchasing agency shall issue a request for qualifications for~~
24 ~~each contract and give adequate public notice of the request for~~
25 ~~qualifications in the same manner as provided in section 41-2533. The~~
26 ~~request for qualifications shall state:~~

27 ~~(a) The criteria to be used by the selection committee to select the~~
28 ~~person or firm to perform the professional services or the construction~~
29 ~~services. The request for qualifications shall also state in a manner~~
30 ~~determined by the purchasing agency the relative weight of the selection~~
31 ~~criteria and, if required under paragraph 8, subdivision (b) of this~~
32 ~~subsection, that one of the criteria will be the person's or firm's~~
33 ~~subcontractor selection plan or procedures to implement the purchasing~~
34 ~~agency's subcontractor selection plan.~~

35 ~~(b) If the purchasing agency will hold interviews as part of the~~
36 ~~selection process, that interviews shall be held with at least three and no~~
37 ~~more than five persons or firms, except that if multiple contracts are being~~
38 ~~procured under a single request for qualifications solicitation under this~~
39 ~~subsection or a single request for qualifications and request for proposals~~
40 ~~solicitation under this subsection and subsection F of this section, the~~
41 ~~number to be interviewed shall be at least three and not more than the number~~
42 ~~of contracts plus two.~~

43 ~~4. A purchasing agency may procure multiple contracts under a single~~
44 ~~request for qualifications procurement process under this subsection or, for~~
45 ~~job order contracting construction services or design-build construction~~

1 ~~services, under a single request for qualifications and request for proposals~~
2 ~~procurement process under this subsection and subsection F of this section.~~
3 ~~If a purchasing agency does this:~~

4 ~~(a) The advertisement and the request for qualifications shall state~~
5 ~~that multiple contracts may or will be awarded, shall state the number of~~
6 ~~contracts that may or will be awarded and shall describe the services to be~~
7 ~~performed under each contract.~~

8 ~~(b) There shall be a single selection process for all of the multiple~~
9 ~~contracts, except that for each contract there shall be a separate final list~~
10 ~~and a separate negotiation under subsection E of this section or a separate~~
11 ~~request for proposals competition under subsection F of this section.~~
12 ~~However, if the request for qualifications specifies that all of the multiple~~
13 ~~contracts will be awarded to a single contractor, there may be a single final~~
14 ~~list and a single negotiation for all of the multiple contracts under~~
15 ~~subsection E of this section or a single request for proposals competition~~
16 ~~under subsection F of this section.~~

17 ~~(c) The purchasing agency may award all of the multiple contracts to~~
18 ~~one contractor or may award the multiple contracts to multiple contractors.~~

19 ~~5. For professional services, a purchasing agency may procure multiple~~
20 ~~contracts using a single request for qualifications solicitation under this~~
21 ~~subsection, except that professional services that are part of design-build~~
22 ~~construction services may not be procured under this paragraph. Each of the~~
23 ~~multiple contracts for professional services must have a term not exceeding~~
24 ~~five years and may continue in effect after the five year term for~~
25 ~~professional services on projects commenced within the five year term.~~

26 ~~6. For job order contracting construction services, a purchasing~~
27 ~~agency may procure multiple contracts using a single request for~~
28 ~~qualifications solicitation under this subsection or using a single request~~
29 ~~for qualifications and request for proposals solicitation under this~~
30 ~~subsection and subsection F of this section.~~

31 ~~7. For construction manager at risk construction services and for~~
32 ~~design-build construction services, a purchasing agency may procure multiple~~
33 ~~contracts using a single request for qualifications solicitation under this~~
34 ~~subsection or for design-build construction services using a single request~~
35 ~~for qualifications and request for proposals solicitation under this~~
36 ~~subsection and subsection F of this section but in either case only for a~~
37 ~~specific single project. Portions of the specific single project shall be~~
38 ~~allocated to separate contracts.~~

39 ~~8. For construction manager at risk construction services,~~
40 ~~design-build construction services and job order contracting construction~~
41 ~~services if the contract or contracts will be negotiated under subsection E~~
42 ~~of this section or for job order contracting construction services if the~~
43 ~~contract will be awarded pursuant to subsection F of this section:~~

44 ~~(a) The person or firm selected to perform the construction services~~
45 ~~must select subcontractors based on qualifications alone or on a combination~~

1 ~~of qualifications and price and shall not select subcontractors based on~~
2 ~~price alone. A qualifications and price selection may be a single step~~
3 ~~selection based on a combination of qualifications and price or a two step~~
4 ~~selection. In a two step selection, the first step shall be based on~~
5 ~~qualifications alone and the second step may be based on a combination of~~
6 ~~qualifications and price or on price alone.~~

7 ~~(b) The purchasing agency shall include in the request for~~
8 ~~qualifications either:~~

9 ~~(i) A requirement that each person or firm submit a proposed~~
10 ~~subcontractor selection plan, a requirement that the proposed subcontractor~~
11 ~~selection plan must select subcontractors based on qualifications alone or on~~
12 ~~a combination of qualifications and price and shall not select subcontractors~~
13 ~~based on price alone and, as a selection criteria under the request for~~
14 ~~qualifications, an evaluation of each person's or firm's proposed~~
15 ~~subcontractor selection plan.~~

16 ~~(ii) A subcontractor selection plan adopted by the purchasing agency~~
17 ~~that will apply to the person or firm that is selected to perform the~~
18 ~~construction services and that requires subcontractors to be selected based~~
19 ~~on qualifications alone or on a combination of qualifications and price and~~
20 ~~not based on price alone, a requirement that each person or firm must submit~~
21 ~~a description of the procedures it proposes to use to carry out the~~
22 ~~purchasing agency's subcontractor selection plan and, as a selection criteria~~
23 ~~under the request for qualifications, an evaluation of each person's or~~
24 ~~firm's proposed procedures to carry out the purchasing agency's subcontractor~~
25 ~~selection plan.~~

26 ~~(c) The purchasing agency shall include in its contract with the~~
27 ~~selected person or firm either:~~

28 ~~(i) If the purchasing agency included its subcontractor selection plan~~
29 ~~in the request for qualifications, the purchasing agency's subcontractor~~
30 ~~selection plan and the procedures proposed by the selected person or firm in~~
31 ~~submitting its qualifications with those modifications to the procedures as~~
32 ~~the purchasing agency and the selected person or firm agree.~~

33 ~~(ii) If the purchasing agency did not include its subcontractor~~
34 ~~selection plan in the request for qualifications, the subcontractor selection~~
35 ~~plan proposed by the selected person or firm in submitting its qualifications~~
36 ~~with those modifications as the purchasing agency and the selected person or~~
37 ~~firm agree.~~

38 ~~(d) In making the selection of subcontractors, the person or firm~~
39 ~~selected to perform the construction services shall use the subcontractor~~
40 ~~selection plan and any procedures included in its contract.~~

41 ~~9. The purchasing agency and the selection committee shall not request~~
42 ~~or consider fees, price, man-hours or any other cost information at any point~~
43 ~~in the selection process under this subsection and subsection D of this~~
44 ~~section, including the selection of the persons or firms to be interviewed,~~
45 ~~the selection of the persons or firms to be on the final list, in determining~~

1 ~~the order of preference of persons or firms on the final list or for any~~
2 ~~other purpose in the selection process.~~

3 ~~10. For construction manager at risk construction services and~~
4 ~~design build construction services, the contract or contracts under a single~~
5 ~~request for qualifications procurement process or for design build~~
6 ~~construction services a single request for qualifications and request for~~
7 ~~proposals procurement process shall be limited to a specific single project.~~

8 (c) IF THE CONTRACT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS
9 SECTION, BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE
10 HIGHEST RANKING PERSON OR FIRM ON THE FINAL LIST THAT IT IS THE HIGHEST
11 RANKING PERSON OR FIRM, THE PURCHASING AGENCY SHALL SEND ACTUAL NOTICE TO
12 EACH OF THE FOLLOWING THAT IT IS NOT THE HIGHEST PERSON OR FIRM ON THE FINAL
13 LIST OR THAT ANOTHER PERSON OR FIRM IS THE HIGHEST RANKING PERSON OR FIRM ON
14 THE FINAL LIST:

15 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED.

16 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT
17 MADE SUBMITTALS.

18 (d) IF THE CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS
19 SECTION, BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE
20 PERSONS OR FIRMS ON THE FINAL LIST THAT THEY ARE ON THE FINAL LIST, THE
21 PURCHASING AGENCY SHALL SEND ACTUAL NOTICE TO EACH OF THE FOLLOWING PERSONS
22 OR FIRMS THAT THEY ARE NOT ON THE FINAL LIST OR THAT OTHER PERSONS OR FIRMS
23 ARE ON THE FINAL LIST:

24 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS OR FIRMS INTERVIEWED.

25 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS OR FIRMS THAT MADE
26 SUBMITTALS.

27 D. The director shall award ~~a~~ THE SINGLE contract ~~for professional~~
28 ~~services or construction services to one of the persons or firms on the final~~
29 ~~list for that contract prepared pursuant to subsection C of this section~~
30 UNDER THE PROCUREMENT as provided in subsection E or F of this section.
31 ~~, except that:~~

32 ~~1. If only two persons or firms that the selection committee~~
33 ~~determines are qualified respond to the request for proposals pursuant to~~
34 ~~subsection F of this section or if one of the three persons or firms on the~~
35 ~~final list drops out of the selection process pursuant to subsection E or F~~
36 ~~of this section so that only two of the persons or firms on the final list~~
37 ~~remain, the purchasing agency, as the purchasing agency deems necessary or~~
38 ~~appropriate, may elect to proceed with the procurement process with the two~~
39 ~~persons or firms or elect to readvertise pursuant to subsection C of this~~
40 ~~section.~~

41 ~~2. If only one responsive and responsible person or firm responds to~~
42 ~~the request for qualifications for a contract or multiple contracts to be~~
43 ~~negotiated under subsection E of this section or if persons or firms withdraw~~
44 ~~from the procurement process so that only one responsive and responsible~~
45 ~~person or firm remains in the procurement process, the purchasing agency may~~

1 ~~award the contract or contracts to a single person or firm if the purchasing~~
2 ~~agency determines in writing that the fee negotiated pursuant to subsection E~~
3 ~~of this section is fair and reasonable and either other prospective persons~~
4 ~~or firms had a reasonable opportunity to respond or there is not adequate~~
5 ~~time for a resolicitation.~~

6 E. ~~For each contract included in the request for qualifications, THE~~
7 **PROCUREMENT OFFICER SHALL CONDUCT NEGOTIATIONS WITH PERSONS OR FIRMS ON THE**
8 **FINAL LIST AS FOLLOWS:**

9 1. **THE PROCUREMENT IS FOR A SINGLE CONTRACT FOR CONSTRUCTION SERVICES**
10 **OR PROFESSIONAL SERVICES, AND THERE IS ONE FINAL LIST.**

11 2. **THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF COMPENSATION AND**
12 **OTHER CONTRACT TERMS THAT THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND**
13 **REASONABLE TO THE PROCUREMENT OFFICER. IN MAKING THIS DECISION, THE**
14 **PROCUREMENT OFFICER SHALL TAKE INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE,**
15 **THE COMPLEXITY AND THE NATURE OF THE PROFESSIONAL SERVICES OR CONSTRUCTION**
16 **SERVICES TO BE RENDERED.**

17 3. The procurement officer shall enter into ~~separate~~ negotiations ~~for~~
18 ~~the contract~~ with the highest qualified person or firm on the final list.
19 ~~for that contract determined pursuant to subsection C of this section for the~~
20 ~~professional services or construction services. However, if the request for~~
21 ~~qualifications is for multiple contracts and specifies that all of the~~
22 ~~multiple contracts will be awarded to a single contractor, there may be a~~
23 ~~single negotiation for all of the multiple contracts. The negotiations shall~~
24 ~~include consideration of compensation and other contract terms that the~~
25 ~~officer determines to be fair and reasonable to this state. In making this~~
26 ~~decision, the procurement officer shall take into account the estimated~~
27 ~~value, the scope, the complexity and the nature of the professional services~~
28 ~~or construction services to be rendered.~~

29 4. If the procurement officer is ~~unable~~ **NOT ABLE** to negotiate a
30 satisfactory contract with the highest qualified person or firm on the final
31 list, at compensation and on other contract terms the procurement officer
32 determines to be fair and reasonable to this state, the procurement officer
33 shall formally terminate negotiations with that person or firm. The
34 procurement officer ~~may~~ **SHALL THEN** undertake negotiations with the next most
35 qualified person or firm on the final list in sequence until an agreement is
36 reached or a determination is made to reject all persons or firms on the
37 final list. ~~If a contract for construction services is entered into pursuant~~
38 ~~to this subsection:~~

39 ~~1. If the contract is for construction manager-at-risk construction~~
40 ~~services and includes preconstruction services by the contractor or if the~~
41 ~~contract is for design-build construction services, the purchasing agency~~
42 ~~shall enter into a written contract with the contractor for preconstruction~~
43 ~~services under which contract the purchasing agency shall pay the contractor~~
44 ~~a fee for preconstruction services in an amount agreed by the purchasing~~
45 ~~agency and the contractor, and the purchasing agency shall not request or~~

1 ~~obtain a fixed price or a guaranteed maximum price for the construction from~~
2 ~~the contractor or enter into a construction contract with the contractor~~
3 ~~until after the purchasing agency has entered into the written contract for~~
4 ~~preconstruction services and a preconstruction services fee.~~

5 ~~2. Construction shall not commence until the purchasing agency and~~
6 ~~contractor agree in writing on either a fixed price that the purchasing~~
7 ~~agency will pay for the construction to be commenced or a guaranteed maximum~~
8 ~~price for the construction to be commenced.~~

9 5. IF, IN A PROCUREMENT UNDER THIS SECTION, THE PROCUREMENT OFFICER
10 TERMINATES NEGOTIATIONS WITH A PERSON OR FIRM ON THE FINAL LIST AND COMMENCES
11 NEGOTIATIONS WITH ANOTHER PERSON OR FIRM ON THE FINAL LIST, THE PROCUREMENT
12 OFFICER SHALL NOT IN THAT PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A
13 CONTRACT FOR THE CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES COVERED BY
14 THE FINAL LIST WITH ANY PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE
15 PROCUREMENT OFFICER HAS TERMINATED NEGOTIATIONS.

16 F. As an alternative to subsection E of this section, the procurement
17 officer may award A SINGLE CONTRACT FOR design-build construction services or
18 job-order-contracting construction services as follows:

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

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

24 3. ~~For design-build construction services and job-order-contracting~~
25 ~~construction services,~~ The request for proposals shall include:

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

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

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

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

37 (ii) Offeror qualifications.

38 (iii) Offeror financial capacity.

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

40 (v) For design-build construction services only, if the request for
41 proposals specifies that the purchasing agency will spend its project budget
42 and not more than its project budget and is seeking the best proposal for the
43 project budget, compliance of the offeror's price or life cycle price for
44 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) and for
5 job-order-contracting construction services, the price or life cycle price
6 for procurements that include maintenance services, operations services or
7 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 ~~persons or firms~~ **OFFERORS** that submit
34 preliminary technical proposals. Discussions shall be for the purpose of
35 clarification to ~~assure~~ **ENSURE** full understanding of, and responsiveness to,
36 the solicitation requirements. Offerors shall be accorded fair treatment
37 with respect to any opportunity for discussion and for clarification by the
38 owner. Revision of preliminary technical proposals shall be permitted after
39 submission of preliminary technical proposals and before award for the
40 purpose of obtaining best and final proposals. In conducting any
41 discussions, information derived from proposals submitted by competing
42 offerors shall not be disclosed to other 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 ~~budget~~, as prescribed in the request for
26 proposals, but not less than two-tenths of one per cent of the project final
27 **BUDGET FOR** design and construction ~~budget~~ to each final list offeror who
28 provides a responsive, but unsuccessful, proposal. If the procurement
29 officer does not award a contract, all responsive final list offerors shall
30 receive the stipulated fee based on the purchasing agency's ~~estimate of the~~
31 project final **BUDGET FOR** design and construction ~~budget~~ as included in the
32 request for proposals. The procurement officer shall pay the stipulated fee
33 to each offeror within ninety days after the award of the initial contract or
34 the decision not to award a contract. In consideration for paying the
35 stipulated fee, the procurement officer may use any ideas or information
36 contained in the proposals in connection with any contract awarded for the
37 project, or in connection with a subsequent procurement, without any
38 obligation to pay any additional compensation to the ~~unsuccessful~~ offerors.
39 Notwithstanding the other provisions of this paragraph, an ~~unsuccessful final~~
40 ~~list~~ offeror may elect to waive the stipulated fee. If an ~~unsuccessful final~~
41 ~~list~~ offeror elects to waive the stipulated fee, the purchasing agency may
42 not use ideas and information contained in the offeror's proposal, except
43 that this restriction does not prevent the purchasing agency from using any
44 idea or information if the idea or information is also included in a proposal
45 of an 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 OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND
18 THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS
19 THAT SUBMITTED QUALIFICATIONS. AT THE ELECTION OF THE PURCHASING AGENCY,
20 THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
21 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
22 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
23 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 OF EACH PERSON OR FIRM THAT WAS INTERVIEWED AND THAT
37 SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS THAT
38 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 ANY OTHER FORM AS DETERMINED BY THE
42 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 OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS
7 AND THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR
8 FIRMS THAT SUBMITTED QUALIFICATIONS IN THE SELECTION OF THE PERSONS OR FIRMS
9 TO BE ON THE SHORT LIST TO BE INTERVIEWED. AT THE ELECTION OF THE PURCHASING
10 AGENCY, THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET
11 FOR THE ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS
12 FOR THE INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS
13 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 ANY OTHER FORM AS DETERMINED BY THE
32 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 ~~award and~~
36 ~~execution of a contract by a~~ THE purchasing agency AWARDS A CONTRACT OR
37 TERMINATES THE PROCUREMENT, only the name of each person or firm on the final
38 list developed pursuant to subsection C of this section may be made available
39 to the public. All other information received by the purchasing agency in
40 response to the request for qualifications PURSUANT TO SUBSECTION C OF THIS
41 SECTION or contained in ~~the~~ proposals SUBMITTED PURSUANT TO SUBSECTION F OF
42 THIS SECTION shall be confidential in order to avoid disclosure of the
43 contents that may be prejudicial to competing SUBMITTERS AND offerors during
44 the selection process. ~~The proposals shall be open to public inspection~~

1 ~~after the contract is awarded and the purchasing agency has executed the~~
2 ~~contract.~~

3 2. AFTER THE PURCHASING AGENCY AWARDS THE CONTRACT OR TERMINATES THE
4 PROCUREMENT, THE PURCHASING AGENCY SHALL MAKE AVAILABLE TO THE PUBLIC
5 PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2 AT A MINIMUM ALL OF THE ITEMS THAT
6 THE PURCHASING AGENCY IS REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS
7 SECTION, EXCEPT THE PROPOSALS SUBMITTED IN RESPONSE TO A REQUEST FOR
8 PROPOSALS UNDER SUBSECTION F OF THIS SECTION AND THE DOCUMENT OR DOCUMENTS
9 PRESCRIBED IN SUBSECTION G, PARAGRAPH 1, SUBDIVISION (a), ITEM (v) AND
10 SUBDIVISION (b), ITEMS (v) AND (viii) AND PARAGRAPH 2, SUBDIVISION (d) OF
11 THIS SECTION.

12 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
13 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE PURCHASING AGENCY HAS
14 ENTERED INTO A CONTRACT OR TERMINATED THE PROCUREMENT. AT A MINIMUM THE
15 PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION THAT THE PURCHASING
16 AGENCY IS REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS SECTION SHALL BE MADE
17 AVAILABLE TO THE PUBLIC AFTER THE PURCHASING AGENCY HAS ENTERED INTO A
18 CONTRACT OR TERMINATED THE PROCUREMENT.

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

22 5. THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
23 SUBDIVISION (a), ITEM (v) AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
24 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION ARE AVAILABLE TO THE EXTENT
25 PROVIDED IN TITLE 39, CHAPTER 1, ARTICLE 2.

26 ~~H.~~ I. A purchasing agency may cancel a request for qualifications or
27 a request for proposals, ~~or~~ reject in whole or in part any or all submissions
28 of qualifications or proposals OR DETERMINE NOT TO ENTER INTO A CONTRACT as
29 specified in the solicitation if it is in the best interest of the purchasing
30 agency. The purchasing agency shall make the reasons for cancellation, ~~or~~
31 rejection OR DETERMINATION NOT TO ENTER INTO A CONTRACT part of the contract
32 file.

33 ~~I. Notwithstanding any other law:~~

34 ~~1. The contractor for design build or job order contracting~~
35 ~~construction services is not required to be registered to perform design~~
36 ~~services pursuant to title 32, chapter 1 if the person or firm actually~~
37 ~~performing the design services on behalf of the contractor is appropriately~~
38 ~~registered.~~

39 ~~2. The contractor for construction manager at risk, design build or~~
40 ~~job order contracting construction services shall be licensed to perform~~
41 ~~construction pursuant to title 32, chapter 10.~~

42 ~~J. For job order contracting construction services only:~~

43 ~~1. The maximum dollar amount of an individual job order shall be one~~
44 ~~million dollars or such higher or lower amount prescribed by the director in~~

1 ~~a rule adopted pursuant to chapter 6 of this title as the maximum amount of~~
2 ~~an individual job order, except that:~~

3 ~~(a) The amount for school districts in rules adopted pursuant to~~
4 ~~section 15-213, subsection A shall be one million dollars or such higher or~~
5 ~~lower amount as adopted by the director.~~

6 ~~(b) Without affecting the scope of section 41-2501, subsection N or~~
7 ~~any similar provision, the maximum amount of an individual job order for the~~
8 ~~Arizona board of regents, the legislative and judicial branches of state~~
9 ~~government and the state compensation fund shall be one million dollars or~~
10 ~~such higher or lower amount adopted by the Arizona board of regents, the~~
11 ~~legislative or judicial branches of state government or the state~~
12 ~~compensation fund, respectively, either in an action noticed pursuant to~~
13 ~~title 38, chapter 3, article 3.1 or an adopted rule. Requirements shall not~~
14 ~~be artificially divided or fragmented in order to constitute a job order that~~
15 ~~satisfies this requirement.~~

16 ~~2. If the contractor subcontracts or intends to subcontract part or~~
17 ~~all of the work under a job order and if the job order construction services~~
18 ~~contract includes descriptions of standard individual tasks, standard unit~~
19 ~~prices for standard individual tasks and pricing of job orders based on the~~
20 ~~number of units of standard individual tasks in the job order:~~

21 ~~(a) The contractor has a duty to deliver promptly to each~~
22 ~~subcontractor invited to bid a coefficient to the contractor to do all or~~
23 ~~part of the work under one or more job orders:~~

24 ~~(i) A copy of the descriptions of all standard individual tasks on~~
25 ~~which the subcontractor is invited to bid.~~

26 ~~(ii) A copy of the standard unit prices for the individual tasks on~~
27 ~~which the subcontractor is invited to bid.~~

28 ~~(b) If not previously delivered to the subcontractor, the contractor~~
29 ~~has a duty to deliver promptly the following to each subcontractor invited to~~
30 ~~or that has agreed to do any of the work included in any job order:~~

31 ~~(i) A copy of the description of each standard individual task that is~~
32 ~~included in the job order and that the subcontractor is invited to perform.~~

33 ~~(ii) The number of units of each standard individual task that is~~
34 ~~included in the job order and that the subcontractor is invited to perform.~~

35 ~~(iii) The standard unit price for each standard individual task that~~
36 ~~is included in the job order and that the subcontractor is invited to~~
37 ~~perform.~~

38 ~~K. Notwithstanding anything to the contrary in this section or this~~
39 ~~title, a purchasing agency shall not:~~

40 ~~1. Enter into a contract as contractor to provide~~
41 ~~construction manager at risk construction services, design-build construction~~
42 ~~services or job order contracting construction services.~~

43 ~~2. Contract with itself, with another purchasing agency, with this~~
44 ~~state or with any other governmental unit of this state or the federal~~
45 ~~government for the purchasing agency to provide construction manager at risk~~

1 ~~construction services, design build construction services or~~
2 ~~job order contracting construction services.~~

3 ~~L. The prohibitions prescribed in subsection K of this section do not~~
4 ~~prohibit a purchasing agency from providing construction for itself as~~
5 ~~provided by law.~~

6 J. IF THE PURCHASING AGENCY DOES NOT HAVE A PROCUREMENT PROTEST POLICY
7 AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE
8 PURCHASING AGENCY, FOR PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION
9 THE PURCHASING AGENCY SHALL FOLLOW THE PROCUREMENT PROTEST POLICY AND
10 PROCEDURES OF THE DEPARTMENT. THE PURCHASING AGENCY SHALL PROCESS ALL
11 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION.

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

16 ~~N. The procurement officer shall include in each contract for~~
17 ~~construction services the full street or physical address of each separate~~
18 ~~location at which the construction will be performed and a requirement that~~
19 ~~the contractor and each subcontractor at any level include in each of its~~
20 ~~subcontracts the same address information. The contractor and each~~
21 ~~subcontractor at any level shall include in each subcontract the full street~~
22 ~~or physical address of each separate location at which construction work will~~
23 ~~be performed.~~

24 Sec. 27. Renumber

25 Sections 41-2579 and 41-2580, Arizona Revised Statutes, are renumbered
26 as sections 41-2582 and 41-2583.

27 Sec. 28. Title 41, chapter 23, article 5, Arizona Revised Statutes, is
28 amended by adding new sections 41-2579 and 41-2580 and section 41-2581, to
29 read:

30 41-2579. Procurement of multiple contracts for certain
31 job-order-contracting construction services and
32 certain professional services; definition

33 A. EXCEPT AS AUTHORIZED IN THIS SECTION AND IN SECTIONS 41-2535,
34 41-2536, 41-2537 AND 41-2581, A PURCHASING AGENCY SHALL NOT PROCURE IN A
35 SINGLE PROCUREMENT MULTIPLE CONTRACTS FOR CONSTRUCTION SERVICES OR
36 PROFESSIONAL SERVICES. IN A PROCUREMENT UNDER THIS SECTION, THERE IS A
37 SINGLE PROCUREMENT PROCESS FOR ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE
38 PROCUREMENT. A PURCHASING AGENCY MAY PROCURE UNDER THIS SECTION:

39 1. MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION
40 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS.

41 2. MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES TO BE AWARDED TO
42 SEPARATE PERSONS OR FIRMS OR TO BE AWARDED TO A SINGLE PERSON OR FIRM AS
43 SPECIFIED IN THE REQUEST FOR QUALIFICATIONS.

44 B. A PURCHASING AGENCY SHALL PROVIDE NOTICE OF EACH PROCUREMENT UNDER
45 THIS SECTION AND SHALL AWARD CONTRACTS ON THE BASIS OF DEMONSTRATED

1 COMPETENCE AND QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL SERVICES OR
2 CONSTRUCTION SERVICES PURSUANT TO THE PROCEDURES PRESCRIBED IN THIS SECTION.

3 C. IN A PROCUREMENT PURSUANT TO THIS SECTION:

4 1. THE FOLLOWING REQUIREMENTS APPLY:

5 (a) THE PURCHASING AGENCY AND THE SELECTION COMMITTEE SHALL NOT
6 REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT
7 ANY POINT IN THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION
8 D OF THIS SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE
9 INTERVIEWED, THE SELECTION OF PERSONS OR FIRMS TO BE ON A FINAL LIST, IN
10 DETERMINING THE ORDER OF PREFERENCE OF PERSONS OR FIRMS ON A FINAL LIST OR
11 FOR ANY OTHER PURPOSE IN THE SELECTION PROCESS.

12 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
13 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON A FINAL LIST AND
14 THEIR ORDER ON A FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND SHALL
15 CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE
16 PURCHASING AGENCY FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER
17 FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER
18 ACTIONS.

19 (c) IF THE PURCHASING AGENCY ENTERS INTO THE NUMBER OF MULTIPLE
20 CONTRACTS BEING PROCURED FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR
21 PROFESSIONAL SERVICES, A PROCUREMENT UNDER THIS SECTION ENDS. AFTER THAT
22 TIME THE PURCHASING AGENCY MAY NOT USE THE PROCUREMENT OR ANY EXISTING FINAL
23 LIST IN THE PROCUREMENT AS THE BASIS FOR ENTERING INTO A REPLACEMENT CONTRACT
24 WITH ANY OTHER PERSON OR FIRM THAT PARTICIPATED IN THE PROCUREMENT.

25 (d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
26 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
27 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

28 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
29 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT
30 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE
31 PROCUREMENT, THE PURCHASING AGENCY, AS THE PURCHASING AGENCY DETERMINES
32 NECESSARY OR APPROPRIATE, MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
33 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING
34 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE PURCHASING
35 AGENCY MAY ELECT TO TERMINATE THE PROCUREMENT.

36 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
37 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO
38 SUBSECTION E OF THIS SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE
39 PERSON OR FIRM RESPONDS TO THE REQUEST FOR QUALIFICATIONS OR IF ONE OR MORE
40 PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND
41 RESPONSIBLE PERSON OR FIRM REMAINS IN THE PROCUREMENT, THE DIRECTOR MAY ELECT
42 TO PROCEED WITH THE PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE DIRECTOR
43 DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF
44 THIS SECTION IS FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS

1 OR FIRMS HAD REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME
2 FOR A RESOLICITATION.

3 (iii) IF A PERSON OR FIRM ON A FINAL LIST WITHDRAWS OR IS REMOVED FROM
4 THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE BEST
5 INTEREST OF THIS STATE, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON OR
6 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. THE PURCHASING AGENCY SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR
10 EACH PROCUREMENT AND GIVE ADEQUATE PUBLIC NOTICE OF THE REQUEST FOR
11 QUALIFICATIONS IN THE SAME MANNER AS PROVIDED IN SECTION 41-2533. THE
12 PUBLICATION SHALL INCLUDE THE FACT THAT MULTIPLE CONTRACTS MAY OR WILL BE
13 AWARDED, SHALL STATE THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND
14 SHALL DESCRIBE THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
15 CONSTRUCTION SERVICES TO BE PERFORMED UNDER EACH CONTRACT. THE REQUEST FOR
16 QUALIFICATIONS SHALL:

17 (a) STATE THE FOLLOWING INFORMATION ABOUT THE CONTRACTS THAT MAY OR
18 WILL BE AWARDED:

19 (i) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
20 SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE
21 PERSONS OR FIRMS, THAT MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING
22 CONSTRUCTION SERVICES MAY OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT
23 MAY OR WILL BE AWARDED, THE SERVICES TO BE PERFORMED UNDER EACH OF THE
24 MULTIPLE CONTRACTS AND THAT EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO
25 A SEPARATE PERSON OR FIRM.

26 (ii) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
27 PROFESSIONAL SERVICES, THAT MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES MAY
28 OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED, THE
29 SERVICES TO BE PERFORMED UNDER EACH OF THE MULTIPLE CONTRACTS AND EITHER THAT
30 EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO A SEPARATE PERSON OR FIRM
31 OR THAT ALL OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO THE SAME PERSON OR
32 FIRM.

33 (b) STATE AS TO FINAL LISTS:

34 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
35 TO BE AWARDED TO A SINGLE PERSON OR FIRM, THAT THERE WILL BE A SINGLE FINAL
36 LIST OF AT LEAST THREE AND NOT MORE THAN FIVE PERSONS OR FIRMS.

37 (ii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR SIMILAR
38 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
39 OR FIRMS OR IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR SIMILAR PROFESSIONAL
40 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT THERE WILL BE A
41 SINGLE FINAL LIST AND THE NUMBER OF PERSONS OR FIRMS ON THE FINAL LIST, WHICH
42 SHALL BE THE SUM OF THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND A
43 NUMBER THAT IS DETERMINED BY THE PURCHASING AGENCY AND THAT IS NOT MORE THAN
44 FIVE.

1 (iii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR DIFFERENT
2 PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT THERE
3 WILL BE A SEPARATE FINAL LIST FOR EACH TYPE OF PROFESSIONAL SERVICES AND THAT
4 THE NUMBER OF PERSONS OR FIRMS ON EACH FINAL LIST WILL BE THE NUMBER OF
5 CONTRACTS THAT MAY OR WILL BE AWARDED FOR EACH TYPE OF PROFESSIONAL SERVICES
6 AND A NUMBER THAT IS DETERMINED BY THE PURCHASING AGENCY AND THAT IS NOT MORE
7 THAN FIVE.

8 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
9 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
10 EXCEPT THAT IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
11 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS ONE OF THE
12 CRITERIA SHALL BE THE PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR
13 PROCEDURES TO IMPLEMENT THE PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN.
14 ALL SELECTION CRITERIA UNDER THIS SUBSECTION SHALL BE FACTORS THAT
15 DEMONSTRATE COMPETENCE AND QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL
16 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES INCLUDED IN THE
17 PROCUREMENT. IF:

18 (i) INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
19 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
20 BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND THE REQUEST
21 FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
22 THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON EACH
23 FINAL LIST AND IN DETERMINING THEIR ORDER ON EACH FINAL LIST. THE FINAL LIST
24 SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE SELECTION
25 CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR FIRMS TO BE
26 INTERVIEWED. THE REQUEST FOR QUALIFICATIONS ALSO SHALL STATE WHETHER THE
27 PURCHASING AGENCY WILL SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND
28 THEIR ORDER ON THE FINAL LIST SOLELY THROUGH THE RESULTS OF THE INTERVIEW
29 PROCESS OR THROUGH THE COMBINED RESULTS OF BOTH THE INTERVIEW PROCESS AND THE
30 EVALUATION OF STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA SUBMITTED IN
31 RESPONSE TO THE PURCHASING AGENCY'S REQUEST FOR QUALIFICATIONS.

32 (ii) INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
33 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
34 BE USED IN SELECTING THE PERSONS OR FIRMS ON EACH FINAL LIST AND IN
35 DETERMINING THEIR ORDER ON EACH FINAL LIST.

36 (d) IF THE PURCHASING AGENCY WILL HOLD INTERVIEWS AS PART OF THE
37 SELECTION PROCESS:

38 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
39 TO BE AWARDED TO THE SAME PERSON OR FIRM, STATE THAT INTERVIEWS WILL BE HELD
40 AND THAT THE INTERVIEWS WILL BE WITH AT LEAST THREE BUT NOT MORE THAN FIVE
41 PERSONS OR FIRMS.

42 (ii) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR SIMILAR
43 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
44 OR FIRMS OR IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR SIMILAR PROFESSIONAL
45 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, STATE THAT INTERVIEWS

1 WILL BE HELD AND THAT THE INTERVIEWS WILL BE WITH A SPECIFIED NUMBER OF
2 PERSONS OR FIRMS. THE SPECIFIED NUMBER SHALL BE STATED IN THE REQUEST FOR
3 QUALIFICATIONS, SHALL BE DETERMINED BY THE PURCHASING AGENCY AND SHALL BE THE
4 SUM OF THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND A NUMBER THAT
5 IS DETERMINED BY THE PURCHASING AGENCY AND THAT IS NOT MORE THAN FIVE.

6 (iii) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR DIFFERENT
7 PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, STATE THAT
8 INTERVIEWS WILL BE HELD AND THAT THE INTERVIEWS WILL BE WITH A SPECIFIED
9 NUMBER OF PERSONS OR FIRMS. THE SPECIFIED NUMBER SHALL BE STATED IN THE
10 REQUEST FOR QUALIFICATIONS, SHALL BE DETERMINED BY THE PURCHASING AGENCY,
11 SHALL BE AT LEAST THREE TIMES THE NUMBER OF CONTRACTS THAT MAY OR WILL BE
12 AWARDED AND SHALL NOT BE MORE THAN FIVE TIMES THE NUMBER OF CONTRACTS THAT
13 MAY OR WILL BE AWARDED.

14 (e) FOR PROCUREMENTS OF MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
15 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, INCLUDE
16 EITHER:

17 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
18 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
19 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
20 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
21 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

22 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE PURCHASING AGENCY
23 THAT APPLIES TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE
24 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES AND THAT REQUIRES SUBCONTRACTORS
25 TO BE SELECTED BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION OF
26 QUALIFICATIONS AND PRICE AND NOT BASED ON PRICE ALONE AND A REQUIREMENT THAT
27 EACH PERSON OR FIRM MUST SUBMIT A DESCRIPTION OF THE PROCEDURES IT PROPOSES
28 TO USE TO IMPLEMENT THE PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN.

29 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
30 PURCHASING AGENCY'S PROTEST POLICY AND PROCEDURES OR, IF THE PURCHASING
31 AGENCY DOES NOT HAVE A PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE
32 PROTEST POLICY AND PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION
33 APPLY TO ANY PROTESTS IN CONNECTION WITH THE PROCUREMENT.

34 3. THE DIRECTOR OR HEAD OF THE PURCHASING AGENCY SHALL INITIATE AN
35 APPROPRIATELY QUALIFIED SELECTION COMMITTEE FOR EACH REQUEST FOR
36 QUALIFICATIONS. THE DIRECTOR OR HEAD OF THE PURCHASING AGENCY SHALL ENSURE
37 THAT THE SELECTION COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION
38 COMMITTEE. EACH SELECTION COMMITTEE MUST INCLUDE ONE EMPLOYEE OF THE
39 PURCHASING AGENCY OR A PURCHASING AGENCY REPRESENTATIVE APPOINTED BY THE
40 PURCHASING AGENCY. THE SAME SELECTION COMMITTEE SHALL FUNCTION AS TO ALL OF
41 THE MULTIPLE CONTRACTS INCLUDED IN THE PROCUREMENT. IF THE PURCHASING
42 AGENCY IS PROCURING MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES, THE
43 PURCHASING AGENCY SHALL DETERMINE THE NUMBER AND QUALIFICATIONS OF THE
44 SELECTION COMMITTEE MEMBERS. A SELECTION COMMITTEE FOR THE PROCUREMENT OF
45 MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL HAVE

1 NOT MORE THAN SEVEN MEMBERS AND SHALL INCLUDE AT LEAST ONE PERSON WHO IS A
2 SENIOR MANAGEMENT EMPLOYEE OF A LICENSED CONTRACTOR AND ONE PERSON WHO IS AN
3 ARCHITECT OR ENGINEER REGISTERED PURSUANT TO SECTION 32-121. THESE MEMBERS
4 MAY BE EMPLOYEES OF THE PURCHASING AGENCY OR OUTSIDE CONSULTANTS. OUTSIDE
5 CONTRACTORS, ARCHITECTS AND ENGINEERS SERVING ON A SELECTION COMMITTEE ARE
6 NOT ENTITLED TO RECEIVE COMPENSATION FROM THE PURCHASING AGENCY FOR
7 PERFORMING THIS SERVICE, BUT THE PURCHASING AGENCY MAY ELECT TO REIMBURSE
8 OUTSIDE CONTRACTORS, ARCHITECTS AND ENGINEERS FOR TRAVEL, LODGING AND OTHER
9 EXPENSES INCURRED IN CONNECTION WITH SERVICE ON A SELECTION COMMITTEE. A
10 PERSON WHO IS A MEMBER OF A SELECTION COMMITTEE SHALL NOT BE A CONTRACTOR
11 UNDER A CONTRACT AWARDED UNDER THE PROCUREMENT OR PROVIDE ANY PROFESSIONAL
12 SERVICES, CONSTRUCTION, CONSTRUCTION SERVICES, MATERIALS OR OTHER SERVICES
13 UNDER THE CONTRACT. THE SELECTION COMMITTEE AND THE PURCHASING AGENCY SHALL
14 DO THE FOLLOWING:

15 (a) IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR QUALIFICATIONS:

16 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSONS OR FIRMS TO BE
17 INTERVIEWED BY EVALUATING THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE
18 DATA THAT ARE SUBMITTED IN RESPONSE TO THE PURCHASING AGENCY'S REQUEST FOR
19 QUALIFICATIONS BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
20 THE SELECTION CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO
21 DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

22 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
23 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
24 ON A FINAL LIST AND TO DETERMINE THEIR ORDER ON A FINAL LIST ARE NOT INCLUDED
25 IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD THE
26 PURCHASING AGENCY SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE INTERVIEWED
27 THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO BE
28 USED TO SELECT THE PERSONS OR FIRMS ON EACH FINAL LIST AND TO DETERMINE THEIR
29 ORDER ON EACH FINAL LIST. THESE SELECTION CRITERIA AND RELATIVE WEIGHT MAY
30 BE DIFFERENT THAN THE SELECTION CRITERIA AND RELATIVE WEIGHT USED TO
31 DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

32 (iii) THE SELECTION COMMITTEE SHALL CONDUCT INTERVIEWS WITH THE NUMBER
33 OF PERSONS OR FIRMS TO BE INTERVIEWED AS STATED IN THE REQUEST FOR
34 QUALIFICATIONS REGARDING THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
35 CONSTRUCTION SERVICES AND THE RELATIVE METHODS OF APPROACH FOR FURNISHING THE
36 REQUIRED PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION
37 SERVICES.

38 (b) BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
39 SELECTION CRITERIA SPECIFIED AS PROVIDED IN THIS SUBSECTION FOR SELECTION OF
40 THE PERSONS OR FIRMS ON EACH FINAL LIST AND THEIR ORDER ON EACH FINAL LIST,
41 THE SELECTION COMMITTEE SHALL SELECT THE PERSONS OR FIRMS FOR EACH FINAL LIST
42 AND IN THE CASE OF A FINAL LIST OR FINAL LISTS FOR MULTIPLE CONTRACTS THAT
43 WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION, RANK THE PERSONS OR
44 FIRMS ON EACH FINAL LIST IN ORDER OF PREFERENCE. IF THE PROCUREMENT IS FOR
45 MULTIPLE CONTRACTS FOR DIFFERENT PROFESSIONAL SERVICES TO BE AWARDED TO

1 SEPARATE PERSONS OR FIRMS, THERE IS A SEPARATE FINAL LIST FOR EACH TYPE OF
2 PROFESSIONAL SERVICES, AND IF A PERSON OR FIRM SUBMITTED QUALIFICATIONS FOR
3 MORE THAN ONE TYPE OF PROFESSIONAL SERVICES, THE PERSON OR FIRM MAY BE ON
4 MORE THAN ONE FINAL LIST.

5 (c) IF THE CONTRACT WILL BE AWARDED UNDER SUBSECTION E OF THIS
6 SECTION, BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE
7 PERSONS OR FIRMS ON EACH FINAL LIST THAT THEY ARE ON THAT FINAL LIST, THE
8 PURCHASING AGENCY SHALL SEND ACTUAL NOTICE TO THE FOLLOWING PERSONS OR FIRMS
9 THAT THEY ARE NOT ON THAT FINAL LIST:

10 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED
11 FOR THAT FINAL LIST.

12 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT
13 MADE SUBMITTALS FOR THAT FINAL LIST.

14 (d) IF THE CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS
15 SECTION, BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE
16 PERSONS OR FIRMS ON THE FINAL LIST THAT THEY ARE ON THE FINAL LIST, THE
17 PURCHASING AGENCY SHALL SEND ACTUAL NOTICE TO EACH OF THE FOLLOWING PERSONS
18 OR FIRMS THAT THEY ARE NOT ON THE FINAL LIST OR THAT OTHER PERSONS OR FIRMS
19 ARE ON THE FINAL LIST:

20 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS OR FIRMS INTERVIEWED.

21 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS OR FIRMS THAT MADE
22 SUBMITTALS.

23 D. THE PURCHASING AGENCY SHALL AWARD MULTIPLE CONTRACTS SPECIFIED IN
24 THE REQUEST FOR QUALIFICATIONS AS PROVIDED IN SUBSECTION E OR F OF THIS
25 SECTION.

26 E. THE PROCUREMENT OFFICER SHALL CONDUCT NEGOTIATIONS WITH PERSONS OR
27 FIRMS ON THE FINAL LIST OR FINAL LISTS. THE NEGOTIATIONS SHALL INCLUDE
28 CONSIDERATION OF COMPENSATION AND OTHER CONTRACT TERMS THAT THE PROCUREMENT
29 OFFICER DETERMINES TO BE FAIR AND REASONABLE TO THIS STATE. IN MAKING THIS
30 DECISION, THE PROCUREMENT OFFICER SHALL TAKE INTO ACCOUNT THE ESTIMATED
31 VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF THE PROFESSIONAL SERVICES
32 OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE RENDERED. IF IN A
33 PROCUREMENT UNDER THIS SECTION THE PROCUREMENT OFFICER TERMINATES
34 NEGOTIATIONS WITH A PERSON OR FIRM ON A FINAL LIST AND COMMENCES NEGOTIATIONS
35 WITH ANOTHER PERSON OR FIRM ON THAT FINAL LIST, THE PROCUREMENT OFFICER SHALL
36 NOT IN THAT PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A CONTRACT FOR
37 THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES
38 COVERED BY THAT FINAL LIST WITH ANY PERSON OR FIRM ON THAT FINAL LIST WITH
39 WHOM THE PROCUREMENT OFFICER HAS TERMINATED NEGOTIATIONS. IF THE PROCUREMENT
40 IS FOR:

41 1. MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES TO BE AWARDED TO A
42 SINGLE PERSON OR FIRM, THERE IS ONE FINAL LIST AND THE PROCUREMENT OFFICER
43 SHALL ENTER INTO NEGOTIATIONS WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON
44 THE FINAL LIST. IF THE PROCUREMENT OFFICER IS NOT ABLE TO NEGOTIATE A
45 SATISFACTORY CONTRACT WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL

1 LIST, AT COMPENSATION AND ON OTHER CONTRACT TERMS THE PROCUREMENT OFFICER
2 DETERMINES TO BE FAIR AND REASONABLE, THE PROCUREMENT OFFICER SHALL THEN
3 UNDERTAKE NEGOTIATIONS WITH THE NEXT MOST QUALIFIED PERSON OR FIRM ON THE
4 FINAL LIST IN SEQUENCE UNTIL AN AGREEMENT IS REACHED OR A DETERMINATION IS
5 MADE TO REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST.

6 2. MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION
7 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS OR FOR MULTIPLE CONTRACTS
8 FOR SIMILAR PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS,
9 THERE IS ONE FINAL LIST AND THE PROCUREMENT OFFICER SHALL ENTER INTO SEPARATE
10 NEGOTIATIONS FOR CONTRACTS WITH THE NUMBER OF THE HIGHEST QUALIFIED PERSONS
11 OR FIRMS ON THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS TO BE AWARDED.
12 IF THE PROCUREMENT OFFICER IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT
13 WITH A PERSON OR FIRM WITH WHOM THE PROCUREMENT OFFICER HAS COMMENCED
14 NEGOTIATIONS, THE PROCUREMENT OFFICER SHALL FORMALLY TERMINATE NEGOTIATIONS
15 WITH THAT PERSON OR FIRM. THE PROCUREMENT OFFICER SHALL THEN UNDERTAKE
16 NEGOTIATIONS FOR A CONTRACT WITH THE NEXT MOST QUALIFIED PERSON OR FIRM ON
17 THE FINAL LIST WITH WHOM THE PROCUREMENT OFFICER IS NOT THEN NEGOTIATING AND
18 WITH WHOM THE PROCUREMENT OFFICER HAS NOT PREVIOUSLY NEGOTIATED IN SEQUENCE
19 UNTIL AN AGREEMENT IS REACHED FOR SOME OR ALL OF THE MULTIPLE CONTRACTS
20 INCLUDED IN THE REQUEST FOR QUALIFICATIONS OR A DETERMINATION IS MADE TO
21 REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST.

22 3. MULTIPLE CONTRACTS FOR DIFFERENT PROFESSIONAL SERVICES TO BE
23 AWARDED TO SEPARATE PERSONS OR FIRMS, THERE IS A SEPARATE FINAL LIST FOR EACH
24 TYPE OF PROFESSIONAL SERVICES AND THE PROCUREMENT OFFICER SHALL ENTER INTO
25 SEPARATE NEGOTIATIONS FOR CONTRACTS WITH THE NUMBER OF THE HIGHEST QUALIFIED
26 PERSONS OR FIRMS ON THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS TO BE
27 AWARDED. IF THE PROCUREMENT OFFICER IS NOT ABLE TO NEGOTIATE A SATISFACTORY
28 CONTRACT WITH A PERSON OR FIRM WITH WHOM THE PROCUREMENT OFFICER HAS
29 COMMENCED NEGOTIATIONS, THE PROCUREMENT OFFICER SHALL FORMALLY TERMINATE
30 NEGOTIATIONS WITH THAT PERSON OR FIRM. THE PROCUREMENT OFFICER SHALL THEN
31 UNDERTAKE NEGOTIATIONS FOR A CONTRACT WITH THE NEXT MOST QUALIFIED PERSON OR
32 FIRM ON THE FINAL LIST WITH WHOM THE PROCUREMENT OFFICER IS NOT THEN
33 NEGOTIATING AND WITH WHOM THE PROCUREMENT OFFICER HAS NOT PREVIOUSLY
34 NEGOTIATED IN SEQUENCE UNTIL AN AGREEMENT IS REACHED FOR SOME OR ALL OF THE
35 MULTIPLE CONTRACTS INCLUDED IN THE REQUEST FOR QUALIFICATIONS OR A
36 DETERMINATION IS MADE TO REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST.

37 F. AS AN ALTERNATIVE TO SUBSECTION E OF THIS SECTION, THE PURCHASING
38 AGENCY MAY AWARD MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION
39 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS AS FOLLOWS:

40 1. THE PURCHASING AGENCY SHALL USE THE SELECTION COMMITTEE APPOINTED
41 FOR THE REQUEST FOR QUALIFICATIONS PURSUANT TO SUBSECTION C OF THIS SECTION.

42 2. THE PURCHASING AGENCY SHALL ISSUE A REQUEST FOR PROPOSALS TO THE
43 PERSONS OR FIRMS ON THE FINAL LIST DEVELOPED PURSUANT TO SUBSECTION C OF THIS
44 SECTION.

1 3. THE REQUEST FOR PROPOSALS SHALL INCLUDE:
2 (a) THE PURCHASING AGENCY'S PROJECT SCHEDULE AND PROJECT FINAL BUDGET
3 FOR DESIGN AND CONSTRUCTION OR LIFE CYCLE BUDGET FOR A PROCUREMENT THAT
4 INCLUDES MAINTENANCE SERVICES OR OPERATIONS SERVICES.
5 (b) A STATEMENT THAT THE MULTIPLE CONTRACTS WILL BE AWARDED TO A
6 SPECIFIED NUMBER OF OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST NUMBER OF
7 POINTS UNDER A SCORING METHOD. THE SPECIFIED NUMBER OF OFFERORS WILL BE THE
8 NUMBER OF CONTRACTS INCLUDED IN THE PROCUREMENT.
9 (c) A DESCRIPTION OF THE SCORING METHOD, INCLUDING A LIST OF THE
10 FACTORS IN THE SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH
11 FACTOR. THE FACTORS IN THE SCORING METHOD SHALL INCLUDE:
12 (i) OFFEROR QUALIFICATIONS.
13 (ii) OFFEROR FINANCIAL CAPACITY.
14 (iii) COMPLIANCE WITH THE PURCHASING AGENCY'S PROJECT SCHEDULE.
15 (iv) THE PRICE OR LIFE CYCLE PRICE FOR PROCUREMENTS THAT INCLUDE
16 MAINTENANCE SERVICES, OPERATIONS SERVICES OR FINANCE SERVICES.
17 (v) AN OFFEROR QUALITY MANAGEMENT PLAN.
18 (vi) OTHER EVALUATION FACTORS THAT DEMONSTRATE COMPETENCE AND
19 QUALIFICATIONS FOR THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IN THE
20 REQUEST FOR PROPOSALS AS DETERMINED BY THE PURCHASING AGENCY, IF ANY.
21 (d) A REQUIREMENT THAT EACH OFFEROR SUBMIT SEPARATELY A TECHNICAL
22 PROPOSAL AND A PRICE PROPOSAL AND THAT THE OFFEROR'S ENTIRE PROPOSAL BE
23 RESPONSIVE TO THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.
24 (e) A STATEMENT THAT IN APPLYING THE SCORING METHOD THE SELECTION
25 COMMITTEE WILL SEPARATELY EVALUATE THE TECHNICAL PROPOSAL AND THE PRICE
26 PROPOSAL AND WILL EVALUATE AND SCORE THE TECHNICAL PROPOSAL BEFORE OPENING
27 THE PRICE PROPOSAL.
28 (f) IF THE PURCHASING AGENCY CONDUCTS DISCUSSIONS PURSUANT TO
29 PARAGRAPH 5 OF THIS SUBSECTION, A STATEMENT THAT DISCUSSIONS WILL BE HELD AND
30 A REQUIREMENT THAT EACH OFFEROR SUBMIT A PRELIMINARY TECHNICAL PROPOSAL
31 BEFORE THE DISCUSSIONS ARE HELD.
32 4. IF THE PURCHASING AGENCY DETERMINES TO CONDUCT DISCUSSIONS PURSUANT
33 TO PARAGRAPH 5 OF THIS SUBSECTION, EACH OFFEROR SHALL SUBMIT A PRELIMINARY
34 TECHNICAL PROPOSAL TO THE PURCHASING AGENCY BEFORE THOSE DISCUSSIONS ARE
35 HELD.
36 5. IF DETERMINED BY THE PURCHASING AGENCY AND INCLUDED BY THE
37 PURCHASING AGENCY IN THE REQUEST FOR PROPOSALS, THE SELECTION COMMITTEE SHALL
38 CONDUCT DISCUSSIONS WITH ALL OFFERORS THAT SUBMIT PRELIMINARY TECHNICAL
39 PROPOSALS. DISCUSSIONS SHALL BE FOR THE PURPOSE OF CLARIFICATION TO ENSURE
40 FULL UNDERSTANDING OF, AND RESPONSIVENESS TO, THE SOLICITATION REQUIREMENTS.
41 OFFERORS SHALL BE ACCORDED FAIR TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR
42 DISCUSSION AND FOR CLARIFICATION BY THE PURCHASING AGENCY. REVISION OF
43 PRELIMINARY TECHNICAL PROPOSALS SHALL BE PERMITTED AFTER SUBMISSION OF
44 PRELIMINARY TECHNICAL PROPOSALS AND BEFORE AWARD FOR THE PURPOSE OF OBTAINING
45 BEST AND FINAL PROPOSALS. IN CONDUCTING ANY DISCUSSIONS, INFORMATION DERIVED

1 FROM PROPOSALS SUBMITTED BY COMPETING OFFERORS SHALL NOT BE DISCLOSED TO
2 OTHER COMPETING OFFERORS.

3 6. AFTER COMPLETION OF ANY DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF THIS
4 SUBSECTION OR IF NO DISCUSSIONS ARE HELD, EACH OFFEROR SHALL SEPARATELY
5 SUBMIT THE OFFEROR'S FINAL TECHNICAL PROPOSAL AND ITS PRICE PROPOSAL.

6 7. BEFORE OPENING ANY PRICE PROPOSAL, THE SELECTION COMMITTEE SHALL
7 OPEN THE FINAL TECHNICAL PROPOSALS, EVALUATE THE FINAL TECHNICAL PROPOSALS
8 AND SCORE THE FINAL TECHNICAL PROPOSALS USING THE SCORING METHOD IN THE
9 REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE
10 EVALUATION AND SCORING.

11 8. AFTER COMPLETION OF THE EVALUATION AND SCORING OF ALL FINAL
12 TECHNICAL PROPOSALS, THE SELECTION COMMITTEE SHALL OPEN THE PRICE PROPOSALS,
13 EVALUATE THE PRICE PROPOSALS, SCORE THE PRICE PROPOSALS AND COMPLETE THE
14 SCORING OF THE ENTIRE PROPOSALS USING THE SCORING METHOD IN THE REQUEST FOR
15 PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND
16 SCORING.

17 9. THE PURCHASING AGENCY SHALL AWARD THE MULTIPLE CONTRACTS TO THE
18 RESPONSIVE AND RESPONSIBLE OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST
19 SCORES UNDER THE METHOD OF SCORING IN THE REQUEST FOR PROPOSALS. NO OTHER
20 FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION. BEFORE OR AT THE SAME
21 TIME AS THE PURCHASING AGENCY NOTIFIES THE WINNING OFFERORS THAT THEY HAVE
22 WON, THE PURCHASING AGENCY SHALL GIVE ACTUAL NOTICE TO EACH OTHER OFFEROR
23 EITHER THAT THE OFFEROR HAS NOT WON OR THAT OTHER OFFERORS HAVE WON.

24 10. THE CONTRACTS FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS
25 MADE, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED UNDER
26 SUBSECTION G OF THIS SECTION.

27 G. IF THE PROCUREMENT HAS MULTIPLE FINAL LISTS UNDER SUBSECTION C OF
28 THIS SECTION OR MULTIPLE REQUESTS FOR PROPOSALS UNDER SUBSECTION F OF THIS
29 SECTION, THE PURCHASING AGENCY SHALL RETAIN THE ITEMS IN PARAGRAPH 1 OR 2 OF
30 THIS SUBSECTION, AS APPLICABLE, FOR EACH FINAL LIST. AT A MINIMUM, THE
31 PURCHASING AGENCY SHALL RETAIN THE FOLLOWING FOR EACH PROCUREMENT UNDER THIS
32 SECTION:

33 1. AS TO EACH FINAL LIST UNDER EACH REQUEST FOR QUALIFICATIONS
34 PROCUREMENT PROCESS UNDER SUBSECTION C OF THIS SECTION:

35 (a) IF INTERVIEWS WERE NOT HELD:

36 (i) THE SUBMITTAL OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL LIST
37 AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE PURCHASING AGENCY
38 ENTERS INTO A CONTRACT.

39 (ii) THE FINAL LIST.

40 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
41 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
42 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

43 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
44 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
45 RANK OR SCORE.

1 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
2 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND
3 THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS
4 THAT SUBMITTED QUALIFICATIONS. AT THE ELECTION OF THE PURCHASING AGENCY,
5 THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
6 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
7 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
8 PURCHASING AGENCY.

9 (b) IF INTERVIEWS WERE HELD:

10 (i) ALL SUBMITTALS OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL
11 LIST AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE PURCHASING
12 AGENCY ENTERS INTO A CONTRACT.

13 (ii) THE FINAL LIST.

14 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
15 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
16 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

17 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT WAS
18 INTERVIEWED AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL RANK OR
19 SCORE.

20 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
21 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT WAS INTERVIEWED AND THAT
22 SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS THAT
23 WERE INTERVIEWED. AT THE ELECTION OF THE PURCHASING AGENCY, THIS
24 DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
25 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
26 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
27 PURCHASING AGENCY.

28 (vi) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
29 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE SHORT LIST TO
30 BE INTERVIEWED.

31 (vii) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
32 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
33 RANK OR SCORE IN THE SELECTION OF THE PERSONS OR FIRMS TO BE ON THE SHORT
34 LIST TO BE INTERVIEWED.

35 (viii) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON
36 EACH SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS
37 AND THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR
38 FIRMS THAT SUBMITTED QUALIFICATIONS IN THE SELECTION OF THE PERSONS OR FIRMS
39 TO BE ON THE SHORT LIST TO BE INTERVIEWED. AT THE ELECTION OF THE PURCHASING
40 AGENCY, THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET
41 FOR THE ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS
42 FOR THE INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS
43 DETERMINED BY THE PURCHASING AGENCY.

44 2. FOR EACH REQUEST FOR PROPOSALS PROCUREMENT PROCESS UNDER SUBSECTION
45 F OF THIS SECTION:

1 (a) THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM THAT RECEIVED
2 THE HIGHEST SCORE IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS AND THE
3 ENTIRE PROPOSAL SUBMITTED BY EACH PERSON OR FIRM WITH WHICH THE PURCHASING
4 AGENCY ENTERS INTO A CONTRACT.

5 (b) THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE
6 SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS
7 INCLUDED IN THE REQUEST FOR PROPOSALS.

8 (c) A LIST THAT CONTAINS THE NAME OF EACH OFFEROR THAT SUBMITTED A
9 PROPOSAL AND THAT SHOWS THE OFFEROR'S FINAL OVERALL SCORE.

10 (d) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE ON EACH FACTOR
11 IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS OF EACH OFFEROR THAT
12 SUBMITTED A PROPOSAL AND THAT SUPPORT THE FINAL OVERALL SCORES OF THE
13 OFFERORS THAT SUBMITTED PROPOSALS. AT THE ELECTION OF THE PURCHASING AGENCY,
14 THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
15 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
16 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
17 PURCHASING AGENCY.

18 H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL
19 BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

20 1. NOTWITHSTANDING TITLE 39, CHAPTER 1, ARTICLE 2, UNTIL CONTRACT
21 AWARD BY A PURCHASING AGENCY OF ALL OF THE MULTIPLE CONTRACTS IN THE
22 PROCUREMENT OR TERMINATION OF THE PROCUREMENT BY THE PURCHASING AGENCY, ONLY
23 THE NAME OF EACH PERSON OR FIRM ON THE FINAL LIST DEVELOPED PURSUANT TO
24 SUBSECTION C OF THIS SECTION MAY BE MADE AVAILABLE TO THE PUBLIC AND ALL
25 OTHER INFORMATION RECEIVED BY THE PURCHASING AGENCY IN RESPONSE TO THE
26 REQUEST FOR QUALIFICATIONS UNDER SUBSECTION C OF THIS SECTION OR CONTAINED IN
27 PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL BE CONFIDENTIAL
28 IN ORDER TO AVOID DISCLOSURE OF THE CONTENTS THAT MAY BE PREJUDICIAL TO
29 COMPETING SUBMITTERS AND OFFERORS DURING THE SELECTION PROCESS.

30 2. AFTER THE PURCHASING AGENCY AWARDS ALL OF THE MULTIPLE CONTRACTS IN
31 THE PROCUREMENT OR TERMINATES THE PROCUREMENT, THE PURCHASING AGENCY SHALL
32 MAKE AVAILABLE TO THE PUBLIC PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2 AT A
33 MINIMUM ALL OF THE ITEMS THAT THE PURCHASING AGENCY IS REQUIRED TO RETAIN
34 UNDER SUBSECTION G OF THIS SECTION, EXCEPT THE PROPOSALS SUBMITTED IN
35 RESPONSE TO A REQUEST FOR PROPOSALS UNDER SUBSECTION F OF THIS SECTION AND
36 THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
37 SUBDIVISION (a), ITEM (v), AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
38 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION.

39 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
40 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE PURCHASING AGENCY HAS
41 ENTERED INTO A CONTRACT FOR ALL OF THE MULTIPLE CONTRACTS IN THE PROCUREMENT
42 OR THE PURCHASING AGENCY HAS TERMINATED THE PROCUREMENT. AT A MINIMUM THE
43 PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION THAT THE PURCHASING
44 AGENCY IS REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS SECTION SHALL BE MADE
45 AVAILABLE TO THE PUBLIC AFTER THE PURCHASING AGENCY HAS ENTERED INTO A

1 CONTRACT FOR ALL OF THE CONTRACTS IN THE PROCUREMENT OR THE PURCHASING AGENCY
2 HAS TERMINATED THE PROCUREMENT.

3 4. TO THE EXTENT THAT THE OFFEROR DESIGNATES AND THE PURCHASING AGENCY
4 CONCURS, TRADE SECRETS AND OTHER PROPRIETARY DATA CONTAINED IN A PROPOSAL
5 REMAIN CONFIDENTIAL.

6 5. THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
7 SUBDIVISION (a), ITEM (v) AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
8 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION ARE AVAILABLE TO THE EXTENT
9 PROVIDED IN TITLE 39, CHAPTER 1, ARTICLE 2.

10 I. THE PURCHASING AGENCY MAY CANCEL A REQUEST FOR QUALIFICATIONS OR A
11 REQUEST FOR PROPOSALS, REJECT IN WHOLE OR IN PART ANY OR ALL SUBMITTALS OR
12 PROPOSALS OR DETERMINE NOT TO ENTER INTO ONE OR MORE OF THE MULTIPLE
13 CONTRACTS AS SPECIFIED IN THE SOLICITATION IF THE PURCHASING AGENCY
14 DETERMINES IN ITS ABSOLUTE AND SOLE DISCRETION THAT THE ACTION IS IN THE BEST
15 INTEREST OF THIS STATE. THE PURCHASING AGENCY SHALL MAKE THE REASONS FOR
16 CANCELLATION, REJECTION OR DETERMINATION NOT TO ENTER INTO CONTRACTS PART OF
17 THE CONTRACT FILE.

18 J. IF THE PURCHASING AGENCY DOES NOT HAVE A PROCUREMENT PROTEST POLICY
19 AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE
20 PURCHASING AGENCY, FOR PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION
21 THE PURCHASING AGENCY SHALL FOLLOW THE PROCUREMENT PROTEST POLICY AND
22 PROCEDURES OF THE DEPARTMENT. THE PURCHASING AGENCY SHALL PROCESS ALL
23 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION.

24 K. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
25 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
26 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
27 OF THOSE SERVICES.

28 41-2580. Requirements applicable to construction services and
29 professional services and to contracts for
30 construction services and professional services:
31 definition

32 A. THE REQUIREMENTS PRESCRIBED IN THIS SECTION APPLY TO EACH CONTRACT
33 ENTERED INTO AS THE RESULT OF A PROCUREMENT OF CONSTRUCTION SERVICES OR
34 PROFESSIONAL SERVICES UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578,
35 41-2579 OR 41-2581 AND TO THE PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES
36 INCLUDED IN EACH PROCUREMENT UNDER SECTION 41-2535, 41-2536, 41-2537,
37 41-2578, 41-2579 OR 41-2581.

38 B. IF A PROCUREMENT UNDER SECTION 41-2578 IS FOR
39 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
40 CONSTRUCTION SERVICES TO BE CONTRACTED PURSUANT TO SECTION 41-2578,
41 SUBSECTION E OR IF A PROCUREMENT UNDER SECTION 41-2535, 41-2536 OR 41-2537 IS
42 FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
43 CONSTRUCTION SERVICES, THE PURCHASING AGENCY SHALL ENTER INTO A WRITTEN
44 CONTRACT WITH THE CONTRACTOR FOR PRECONSTRUCTION SERVICES UNDER WHICH THE
45 PURCHASING AGENCY SHALL PAY THE CONTRACTOR A FEE FOR PRECONSTRUCTION SERVICES

1 IN AN AMOUNT AGREED BY THE PURCHASING AGENCY AND THE CONTRACTOR, AND THE
2 PURCHASING AGENCY SHALL NOT REQUEST OR OBTAIN A FIXED PRICE OR A GUARANTEED
3 MAXIMUM PRICE FOR THE CONSTRUCTION FROM THE CONTRACTOR OR ENTER INTO A
4 CONSTRUCTION CONTRACT WITH THE CONTRACTOR UNTIL AFTER THE PURCHASING AGENCY
5 HAS ENTERED INTO THE WRITTEN CONTRACT FOR PRECONSTRUCTION SERVICES AND A
6 PRECONSTRUCTION SERVICES FEE.

7 C. IF A CONTRACT FOR CONSTRUCTION SERVICES IS ENTERED INTO AS THE
8 RESULT OF A PROCUREMENT UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578 OR
9 41-2579, CONSTRUCTION SHALL NOT COMMENCE UNTIL THE PURCHASING AGENCY AND
10 CONTRACTOR AGREE IN WRITING ON EITHER A FIXED PRICE THAT THE PURCHASING
11 AGENCY WILL PAY FOR THE CONSTRUCTION TO BE COMMENCED OR A GUARANTEED MAXIMUM
12 PRICE FOR THE CONSTRUCTION TO BE COMMENCED.

13 D. A CONTRACT FOR PROFESSIONAL SERVICES ENTERED INTO AS THE RESULT OF
14 A PROCUREMENT UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 OR
15 41-2581 SHALL HAVE A TERM NOT EXCEEDING FIVE YEARS AFTER THE DATE OF CONTRACT
16 AWARD BY THE PURCHASING AGENCY OF THE FIRST CONTRACT UNDER THE PROCUREMENT,
17 EXCEPT THAT THE CONTRACT MAY CONTINUE IN EFFECT AFTER THE FIVE YEAR TERM FOR
18 PROFESSIONAL SERVICES ON PROJECTS ON WHICH THE RENDERING OF PROFESSIONAL
19 SERVICES COMMENCES WITHIN THE FIVE YEAR TERM.

20 E. NOTWITHSTANDING ANY OTHER LAW:

21 1. THE CONTRACTOR FOR DESIGN-BUILD OR JOB-ORDER-CONTRACTING
22 CONSTRUCTION SERVICES IS NOT REQUIRED TO BE REGISTERED TO PERFORM DESIGN
23 SERVICES PURSUANT TO TITLE 32, CHAPTER 1 IF THE PERSON OR FIRM ACTUALLY
24 PERFORMING THE DESIGN SERVICES ON BEHALF OF THE CONTRACTOR IS APPROPRIATELY
25 REGISTERED.

26 2. THE CONTRACTOR FOR CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD OR
27 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL BE LICENSED TO PERFORM
28 CONSTRUCTION PURSUANT TO TITLE 32, CHAPTER 10.

29 F. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ONLY:

30 1. THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER SHALL BE ONE
31 MILLION DOLLARS OR SUCH HIGHER OR LOWER AMOUNT PRESCRIBED BY THE PURCHASING
32 AGENCY IN AN ACTION NOTICED PURSUANT TO TITLE 38, CHAPTER 3, ARTICLE 3.1 OR A
33 RULE ADOPTED BY THE PURCHASING AGENCY AS THE MAXIMUM AMOUNT OF AN INDIVIDUAL
34 JOB ORDER. REQUIREMENTS SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN
35 ORDER TO CONSTITUTE A JOB ORDER THAT SATISFIES THIS REQUIREMENT.

36 2. IF THE CONTRACTOR SUBCONTRACTS OR INTENDS TO SUBCONTRACT PART OR
37 ALL OF THE WORK UNDER A JOB ORDER AND IF THE JOB-ORDER-CONTRACTING
38 CONSTRUCTION SERVICES CONTRACT INCLUDES DESCRIPTIONS OF STANDARD INDIVIDUAL
39 TASKS, STANDARD UNIT PRICES FOR STANDARD INDIVIDUAL TASKS AND PRICING OF JOB
40 ORDERS BASED ON THE NUMBER OF UNITS OF STANDARD INDIVIDUAL TASKS IN THE JOB
41 ORDER:

42 (a) THE CONTRACTOR HAS A DUTY TO DELIVER PROMPTLY TO EACH
43 SUBCONTRACTOR INVITED TO BID A COEFFICIENT TO THE CONTRACTOR TO DO ALL OR
44 PART OF THE WORK UNDER ONE OR MORE JOB ORDERS:

1 (i) A COPY OF THE DESCRIPTIONS OF ALL STANDARD INDIVIDUAL TASKS ON
2 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

3 (ii) A COPY OF THE STANDARD UNIT PRICES FOR THE INDIVIDUAL TASKS ON
4 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

5 (b) IF NOT PREVIOUSLY DELIVERED TO THE SUBCONTRACTOR, THE CONTRACTOR
6 HAS A DUTY TO DELIVER PROMPTLY THE FOLLOWING TO EACH SUBCONTRACTOR INVITED TO
7 OR THAT HAS AGREED TO DO ANY OF THE WORK INCLUDED IN ANY JOB ORDER:

8 (i) A COPY OF THE DESCRIPTION OF EACH STANDARD INDIVIDUAL TASK THAT IS
9 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

10 (ii) THE NUMBER OF UNITS OF EACH STANDARD INDIVIDUAL TASK THAT IS
11 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

12 (iii) THE STANDARD UNIT PRICE FOR EACH STANDARD INDIVIDUAL TASK THAT
13 IS INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO
14 PERFORM.

15 G. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION OR THIS
16 TITLE, A PURCHASING AGENCY SHALL NOT:

17 1. ENTER INTO A CONTRACT AS CONTRACTOR TO PROVIDE
18 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION
19 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

20 2. CONTRACT WITH ITSELF, WITH ANOTHER PURCHASING AGENCY, WITH THIS
21 STATE OR WITH ANY OTHER GOVERNMENTAL UNIT OF THIS STATE OR THE FEDERAL
22 GOVERNMENT FOR THE PURCHASING AGENCY TO PROVIDE CONSTRUCTION-MANAGER-AT-RISK
23 CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION SERVICES OR
24 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

25 H. THE PROHIBITIONS PRESCRIBED IN SUBSECTION G OF THIS SECTION DO NOT
26 PROHIBIT A PURCHASING AGENCY FROM PROVIDING CONSTRUCTION FOR ITSELF AS
27 PROVIDED BY LAW.

28 I. THE PURCHASING AGENCY SHALL INCLUDE IN EACH CONTRACT FOR
29 CONSTRUCTION SERVICES THE FULL STREET OR PHYSICAL ADDRESS OF EACH SEPARATE
30 LOCATION AT WHICH THE CONSTRUCTION WILL BE PERFORMED AND A REQUIREMENT THAT
31 THE CONTRACTOR AND EACH SUBCONTRACTOR AT ANY LEVEL INCLUDE IN EACH OF ITS
32 SUBCONTRACTS THE SAME ADDRESS INFORMATION. THE CONTRACTOR AND EACH
33 SUBCONTRACTOR AT ANY LEVEL SHALL INCLUDE IN EACH SUBCONTRACT THE FULL STREET
34 OR PHYSICAL ADDRESS OF EACH SEPARATE LOCATION AT WHICH CONSTRUCTION WORK WILL
35 BE PERFORMED.

36 J. THE FOLLOWING PROVISIONS APPLY TO ALL CONSTRUCTION SERVICES
37 PROCURED UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 OR
38 41-2581:

39 1. THE CONTRACTOR PERFORMING THE CONSTRUCTION SERVICES IS PERMITTED TO
40 SELF-PERFORM PART OF THE CONSTRUCTION WORK, IF AND TO THE EXTENT AGREED IN
41 WRITING BY THE PURCHASING AGENCY AND THE CONTRACTOR. THE PURCHASING AGENCY
42 MAY USE METHODS OTHER THAN COMPETITIVE BIDDING TO ASSURE ITSELF THAT THE
43 PRICE THE PURCHASING AGENCY PAYS TO THE CONTRACTOR FOR SELF-PERFORMED WORK IS
44 FAIR AND REASONABLE. PERMITTED METHODS TO EVALUATE FAIRNESS AND
45 REASONABLENESS OF THE PRICE OF SELF-PERFORMED WORK INCLUDE EVALUATION OF THE

1 CONTRACTOR'S PROPOSED SCOPE OF WORK AND PRICE FOR SELF-PERFORMED WORK BY AN
2 ESTIMATOR WHO IS HIRED AND PAID BY THE PURCHASING AGENCY, WHO IS INDEPENDENT
3 OF THE CONTRACTOR AND WHO MAY BE AN EMPLOYEE OF THE PURCHASING AGENCY.
4 ALTHOUGH THE PURCHASING AGENCY MAY ELECT TO SO REQUIRE, NOTHING IN THIS TITLE
5 OR ANY OTHER LAW SHALL BE CONSTRUED OR INTERPRETED TO REQUIRE THE PURCHASING
6 AGENCY TO REQUIRE A CONTRACTOR DESIRING TO SELF-PERFORM PART OF THE
7 CONSTRUCTION WORK TO COMPETITIVELY BID THAT PART OF THE CONSTRUCTION WORK
8 AGAINST OTHER CONTRACTORS IN A BID COMPETITION.

9 2. THE FOLLOWING REQUIREMENTS APPLY TO THE CONSTRUCTION WORK TO BE
10 PERFORMED BY SUBCONTRACTORS AND DO NOT APPLY TO CONSTRUCTION WORK THAT THE
11 PURCHASING AGENCY AND THE CONTRACTOR AGREE IN WRITING WILL BE SELF-PERFORMED
12 BY THE CONTRACTOR:

13 (a) THE PERSON OR FIRM SELECTED TO PERFORM THE CONSTRUCTION SERVICES
14 SHALL SELECT SUBCONTRACTORS BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION
15 OF QUALIFICATIONS AND PRICE AND SHALL NOT SELECT SUBCONTRACTORS BASED ON
16 PRICE ALONE. A QUALIFICATIONS AND PRICE SELECTION MAY BE A SINGLE-STEP
17 SELECTION BASED ON A COMBINATION OF QUALIFICATIONS AND PRICE OR A TWO-STEP
18 SELECTION. IN A TWO-STEP SELECTION, THE FIRST STEP SHALL BE BASED ON
19 QUALIFICATIONS ALONE AND THE SECOND STEP MAY BE BASED ON A COMBINATION OF
20 QUALIFICATIONS AND PRICE OR ON PRICE ALONE.

21 (b) THE PURCHASING AGENCY SHALL INCLUDE IN EACH CONTRACT:

22 (i) IF THE PURCHASING AGENCY INCLUDED ITS SUBCONTRACTOR SELECTION PLAN
23 IN THE REQUEST FOR QUALIFICATIONS, THE PURCHASING AGENCY'S SUBCONTRACTOR
24 SELECTION PLAN AND THE PROCEDURES TO IMPLEMENT THE PURCHASING AGENCY'S
25 SUBCONTRACTOR SELECTION PLAN PROPOSED BY THE SELECTED PERSON OR FIRM IN
26 SUBMITTING ITS QUALIFICATIONS WITH THOSE MODIFICATIONS TO THE PROCEDURES AS
27 THE PURCHASING AGENCY AND THE SELECTED PERSON OR FIRM AGREE.

28 (ii) IF THE PURCHASING AGENCY DID NOT INCLUDE ITS SUBCONTRACTOR
29 SELECTION PLAN IN THE REQUEST FOR QUALIFICATIONS, THE SUBCONTRACTOR SELECTION
30 PLAN PROPOSED BY THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS
31 WITH THOSE MODIFICATIONS AS THE PURCHASING AGENCY AND THE SELECTED PERSON OR
32 FIRM AGREE.

33 (c) IN MAKING THE SELECTION OF SUBCONTRACTORS, THE PERSON OR FIRM
34 SELECTED TO PERFORM THE CONSTRUCTION SERVICES SHALL USE THE SUBCONTRACTOR
35 SELECTION PLAN AND ANY PROCEDURES INCLUDED IN ITS CONTRACT.

36 K. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
37 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
38 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
39 OF THOSE SERVICES.

40 41-2581. Procurement of certain professional services

41 A. A PURCHASING AGENCY MAY PROCURE UNDER THIS SECTION A SINGLE
42 CONTRACT OR MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES IF THE CONTRACT IS
43 FOR PROFESSIONAL SERVICES BY AN ARCHITECT OR ARCHITECT FIRM AND THE CONTRACT
44 AMOUNT IS TWO HUNDRED FIFTY THOUSAND DOLLARS OR LESS OR IF THE CONTRACT IS
45 FOR PROFESSIONAL SERVICES BY A PERSON OR FIRM OTHER THAN AN ARCHITECT AND THE

1 CONTRACT AMOUNT IS FIVE HUNDRED THOUSAND DOLLARS OR LESS. FOR SUCH
2 PROCUREMENTS, THE DIRECTOR SHALL ENCOURAGE PERSONS OR FIRMS ENGAGED IN THE
3 LAWFUL PRACTICE OF THE PROFESSION TO SUBMIT ANNUALLY A STATEMENT OF
4 QUALIFICATIONS AND EXPERIENCE.

5 B. THE DIRECTOR OR HEAD OF THE PURCHASING AGENCY SHALL INITIATE AN
6 APPROPRIATELY QUALIFIED SELECTION COMMITTEE FOR EACH PROCUREMENT, WHICH MAY
7 INCLUDE ONE CONTRACT OR MULTIPLE CONTRACTS, PURSUANT TO RULES ADOPTED BY THE
8 DIRECTOR OR PURCHASING AGENCY. THE AMOUNT OF EACH CONTRACT IN A SINGLE
9 PROCUREMENT UNDER THIS SECTION SHALL NOT EXCEED THE DOLLAR AMOUNT LIMITS IN
10 SUBSECTION A. THE SELECTION COMMITTEE SHALL EVALUATE CURRENT STATEMENTS OF
11 QUALIFICATIONS AND EXPERIENCE ON FILE WITH THE DIRECTOR OR PURCHASING AGENCY,
12 TOGETHER WITH THOSE THAT MAY BE SUBMITTED BY OTHER PERSONS OR FIRMS REGARDING
13 THE PROCUREMENT. IF POSSIBLE AND PRACTICABLE, THE SELECTION COMMITTEE SHALL
14 CONDUCT INTERVIEWS REGARDING THE PROCUREMENT AND THE RELATIVE METHODS OF
15 FURNISHING THE REQUIRED SERVICES AND, IF POSSIBLE, SHALL SELECT, IN ORDER OF
16 PREFERENCE AND BASED ON CRITERIA ESTABLISHED AND PUBLISHED BY THE SELECTION
17 COMMITTEE, ONE OR MORE FINAL LISTS OF THE PERSONS OR FIRMS DEEMED TO BE THE
18 MOST QUALIFIED TO PROVIDE THE SERVICES REQUIRED. THE SELECTION COMMITTEE
19 SHALL BASE THE SELECTION OF EACH FINAL LIST AND THE ORDER OF PREFERENCE ON
20 DEMONSTRATED COMPETENCE AND QUALIFICATIONS ONLY. THE PURCHASING AGENCY AND
21 THE SELECTION COMMITTEE SHALL NOT REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS
22 OR ANY OTHER COST INFORMATION AT ANY POINT IN THE SELECTION PROCESS UNDER
23 THIS SECTION, INCLUDING THE SELECTION OF THE PERSONS OR FIRMS TO BE
24 INTERVIEWED, THE SELECTION OF THE PERSONS AND FIRMS TO BE ON A FINAL LIST, IN
25 DETERMINING THE ORDER OF PREFERENCE OF PERSONS AND FIRMS ON A FINAL LIST OR
26 FOR ANY OTHER PURPOSE IN THE SELECTION PROCESS. IF THE PROCUREMENT IS FOR:

27 1. A SINGLE CONTRACT OR IF THE PROCUREMENT IS FOR MULTIPLE CONTRACTS
28 TO BE AWARDED TO A SINGLE PERSON OR FIRM, THERE SHALL BE ONE FINAL LIST OF
29 THREE PERSONS OR FIRMS.

30 2. MULTIPLE CONTRACTS FOR DIFFERENT PROFESSIONAL SERVICES TO BE
31 AWARDED TO SEPARATE PERSONS OR FIRMS, THERE SHALL BE A SEPARATE FINAL LIST OF
32 THREE PERSONS OR FIRMS FOR EACH CONTRACT.

33 3. MULTIPLE CONTRACTS FOR THE SAME PROFESSIONAL SERVICES TO BE AWARDED
34 TO SEPARATE PERSONS OR FIRMS, THERE SHALL BE ONE FINAL LIST AND THE NUMBER OF
35 PERSONS OR FIRMS ON THE FINAL LIST SHALL BE THE NUMBER OF CONTRACTS PLUS
36 ANOTHER NUMBER THAT IS DETERMINED BY THE PURCHASING AGENCY AND THAT IS NOT
37 MORE THAN FIVE.

38 C. AFTER EACH FINAL LIST IS SELECTED PURSUANT TO SUBSECTION B, THE
39 PROCUREMENT OFFICER SHALL ENTER INTO NEGOTIATIONS WITH THE HIGHEST QUALIFIED
40 PERSON OR FIRM ON EACH FINAL LIST OR, IN THE CASE OF A SINGLE FINAL LIST FOR
41 MULTIPLE CONTRACTS FOR THE SAME PROFESSIONAL SERVICES TO BE AWARDED TO
42 SEPARATE PERSONS OR FIRMS, THE PURCHASING AGENCY SHALL ENTER INTO
43 NEGOTIATIONS WITH A NUMBER OF THE HIGHEST QUALIFIED PERSONS OR FIRMS ON THE
44 FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED. THE
45 NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF COMPENSATION AND OTHER CONTRACT

1 TERMS THAT THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND REASONABLE TO
 2 THIS STATE. IN MAKING THIS DETERMINATION, THE PROCUREMENT OFFICER SHALL TAKE
 3 INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF
 4 THE PROFESSIONAL SERVICES TO BE RENDERED. IF THE PROCUREMENT OFFICER IS
 5 UNABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH A PERSON OR FIRM WITH WHICH
 6 THE PURCHASING AGENCY IS NEGOTIATING AT A PRICE AND ON OTHER CONTRACT TERMS
 7 THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND REASONABLE TO THIS STATE,
 8 THE PROCUREMENT OFFICER SHALL FORMALLY TERMINATE NEGOTIATIONS WITH THAT
 9 PERSON OR FIRM. THE PROCUREMENT OFFICER MAY UNDERTAKE NEGOTIATIONS WITH THE
 10 NEXT MOST QUALIFIED PERSON OR FIRM ON THE FINAL LIST IN SEQUENCE UNTIL AN
 11 AGREEMENT IS REACHED OR A DETERMINATION IS MADE TO REJECT ALL PERSONS OR
 12 FIRMS ON THE FINAL LIST. IF THE PROCUREMENT OFFICER TERMINATES NEGOTIATIONS
 13 WITH A PERSON OR FIRM ON A FINAL LIST AND COMMENCES NEGOTIATIONS WITH ANOTHER
 14 PERSON OR FIRM ON THE FINAL LIST, THE PROCUREMENT OFFICER SHALL NOT IN THAT
 15 PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO THE SINGLE CONTRACT OR
 16 MULTIPLE CONTRACTS FOR THE PROFESSIONAL SERVICES COVERED BY THAT FINAL LIST
 17 WITH ANY PERSON OR FIRM ON THAT FINAL LIST WITH WHOM THE PROCUREMENT OFFICER
 18 HAS TERMINATED NEGOTIATIONS.

19 D. IF THE PURCHASING AGENCY DOES NOT HAVE A PROCUREMENT PROTEST POLICY
 20 AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE
 21 PURCHASING AGENCY, FOR PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION
 22 THE PURCHASING AGENCY SHALL FOLLOW THE PROCUREMENT PROTEST POLICY AND
 23 PROCEDURES OF THE DEPARTMENT. THE PURCHASING AGENCY SHALL PROCESS ALL
 24 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION.

25 Sec. 29. Section 41-2582, Arizona Revised Statutes, as renumbered by
 26 this act, is amended to read:

27 41-2582. Project delivery methods for design and construction
 28 services

29 A. A purchasing agency may procure design services, construction and
 30 construction services, as applicable, under any of the following project
 31 delivery methods:

- 32 1. Design-bid-build.
- 33 2. Construction-manager-at-risk.
- 34 3. Design-build.
- 35 4. Job-order-contracting.

36 B. For the design-bid-build project delivery method, the director
 37 shall procure:

- 38 1. Design services pursuant to section 41-2535, 41-2536, 41-2537,
 39 41-2578, 41-2579 OR 41-2581.
- 40 2. Construction by competitive sealed bidding, except as otherwise
 41 provided in section 41-2532.

42 C. The director shall procure construction services under the
 43 construction-manager-at-risk, design-build and job-order-contracting project
 44 delivery methods pursuant to section 41-2535, 41-2536, 41-2537, 41-2578 OR
 45 41-2579.

1 D. The director shall procure design services relating to a
2 construction-manager-at-risk construction services project pursuant to
3 section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 OR 41-2581.

4 E. For job-order-contracting construction services projects, if the
5 director does not include design services in the job-order-contracting
6 construction services contract, the director shall procure any design
7 services relating to job-order-contracting construction services projects
8 under the contract pursuant to section 41-2535, 41-2536, 41-2537, 41-2578,
9 41-2579 OR 41-2581.

10 Sec. 30. Section 41-2616, Arizona Revised Statutes, is amended to
11 read:

12 41-2616. Violation; classification; liability; civil penalty;
13 enforcement authority

14 A. A person who contracts for or purchases any material, services or
15 construction in a manner contrary to the requirements of this chapter, the
16 rules adopted pursuant to this chapter, the rules adopted by the state board
17 of education pursuant to section 15-213 or rules adopted by the Arizona board
18 of regents, the Arizona lottery commission or the judicial branch pursuant to
19 section 41-2501 is personally liable for the recovery of all public monies
20 paid plus twenty per cent of such amount and legal interest from the date of
21 payment and all costs and damages arising out of the violation.

22 B. A person who intentionally or knowingly contracts for or purchases
23 any material, services or construction pursuant to a scheme or artifice to
24 avoid the requirements of this chapter, rules adopted pursuant to this
25 chapter, rules adopted by the state board of education pursuant to section
26 15-213 or rules adopted by the state board of regents, the state lottery
27 commission or the judicial branch pursuant to section 41-2501 is guilty of a
28 class 4 felony.

29 C. A person who serves on an evaluation committee for a procurement
30 shall sign a statement before reviewing bids or proposals that the person has
31 no interest in the procurement other than that disclosed and will have no
32 contact with any representative of a competing vendor related to the
33 particular procurement during the course of evaluation of bids or proposals,
34 except those contacts specifically authorized by ~~sections~~ SECTION 41-2534,
35 41-2537, 41-2538, ~~and~~ 41-2578, 41-2579 OR 41-2581. The person shall disclose
36 on the statement any contact unrelated to the pending procurement that the
37 person may need to have with a representative of a competing vendor and any
38 contact with a representative of a competing vendor during evaluation of bids
39 or proposals except those contacts specifically authorized by ~~sections~~
40 SECTION 41-2534, 41-2537, 41-2538, ~~and~~ 41-2578, 41-2579 OR 41-2581. A person
41 who serves on an evaluation committee and who fails to disclose contact with
42 a representative of a competing vendor or who fails to provide accurate
43 information on the statement is subject to a civil penalty of at least one
44 thousand dollars but not more than ten thousand dollars.

1 D. The attorney general on behalf of this state shall enforce the
2 provisions of this chapter.

3 Sec. 31. Section 48-2841, Arizona Revised Statutes, is amended to
4 read:

5 48-2841. Proposals; bond; award of contract; entering into
6 contract; liability on bond

7 A. If the board invites proposals for construction of the flood
8 protection facility, written and signed proposals shall be submitted
9 accompanied by a bond payable to the flood protection district in an amount
10 of at least ten per cent of the aggregate proposal.

11 B. The board, in open session, shall examine and publicly declare the
12 proposals. The board may reject any proposals if deemed for the public good
13 and shall reject all proposals other than the lowest and best proposal of a
14 responsible bidder. The board may award the contract for the improvement to
15 the lowest and best responsible bidder at the price named in that bidder's
16 proposal on a motion, noted in its minutes, approved by a majority vote of
17 its members.

18 C. Notice of the award of the contract shall be published twice in a
19 daily newspaper or once in a weekly or semiweekly newspaper of general
20 circulation in the county.

21 D. At any time within fifteen days after the date of the first
22 publication, a person having an interest in a lot, acre or parcel liable for
23 an assessment who claims that any of the previous acts or proceedings
24 relating to the improvement are irregular, illegal or faulty may file with
25 the board a written notice specifying in what respect the acts and
26 proceedings are irregular, illegal or faulty. All objections to any act or
27 proceeding that are taken before the first publication of the notice of the
28 award are deemed to be waived, except as to matters directly affecting the
29 authority of the board. If the board finds any objection to be valid, it may
30 abandon the proceedings, correct or modify any portion of the proceedings or
31 proceed as in the first instance.

32 E. Within twenty days after the date of the first publication, if no
33 objections have been filed, the successful bidder shall enter into a contract
34 to make the improvement according to its bid. If objections are filed but
35 are rejected by the board, the contract shall be entered into within five
36 days after receiving notice from the board of that rejection. If the bidder
37 fails to enter into the contract within that period, the board, without
38 further proceedings, shall advertise for proposals in the same manner as for
39 the initial proposals. A bidder who fails to enter into the contract is
40 liable on the bidder's bond accompanying the proposal for all costs and
41 damages incurred and sustained by reason of the failure to enter into the
42 contract.

43 F. If the board determines that contracting services for construction
44 of the flood protection facility should be procured pursuant to title 34,
45 chapter 6, article 1, before executing the contract pursuant to section

1 ~~34-607~~ 34-609, the board shall formally approve the form of contract and
2 award the contract to the selected person or firm on a motion, noted in its
3 minutes and approved by a majority vote of its members.

4 G. Notice of the award of the contract shall be published twice in a
5 daily newspaper or once in a weekly or semiweekly newspaper of general
6 circulation in the county. The notice of award shall specifically state the
7 type of contract and that the contract was procured pursuant to title 34,
8 chapter 6, article 1 without competitive bidding.

9 H. At any time within fifteen days after the date of the first
10 publication, any person or entity that participated in the procurement
11 process that selected the person or entity to whom such contract was awarded,
12 or a person having an interest in a lot, acre or parcel liable for an
13 assessment who claims that any of the previous acts or proceedings relating
14 to the improvement or the procurement of contracting services are irregular,
15 illegal or faulty, may file with the board a written notice specifying in
16 what respect the acts and proceedings are irregular, illegal or faulty. All
17 objections to any act or proceeding that are not made before the notice of
18 the award are deemed to be waived, except as to matters directly affecting
19 the authority of the board. If the board finds any objection to be valid, it
20 may abandon the proceedings, correct or modify any portion of the proceedings
21 or proceed as in the first instance.

22 I. Within twenty days after the date of the first publication, if no
23 objections have been filed, the person or entity to whom contracting services
24 have been awarded shall enter into a contract to construct the flood
25 protection facility according to its proposal. If objections are filed but
26 are rejected by the board, the contract shall be entered into within five
27 days after receiving notice from the board of the rejection. If the person
28 or entity to whom contracting services have been awarded fails to enter into
29 the contract within that period, the board without further proceedings shall
30 either advertise for proposals, negotiate a contract with one of the other
31 persons or entities that participated in the procurement process or
32 reinstate the process for procurement of contracting services pursuant to
33 title 34, chapter 6, article 1. The person or entity that failed to enter
34 into the contract is liable for all costs and damages incurred and sustained
35 by reason of that failure.

36 Sec. 32. Section 48-2851, Arizona Revised Statutes, is amended to
37 read:

38 48-2851. List of unpaid assessments; issuance of bonds;
39 denominations; due date; certificate of completion

40 A. After the prescribed time from the date of the warrant has expired
41 and after the flood protection district has recorded the return, the board
42 shall make and certify a complete list of all unpaid assessments.

43 B. If any person, before certification of the list, presents to the
44 board an affidavit that the person is the owner of a lot, acre or parcel on
45 the list, accompanied by the certificate of a searcher of record that the

1 person is the owner of record, and notifies the board, in writing, that the
2 owner desires no bond to be issued for the assessment on the lot, acre or
3 parcel, the assessment shall not be included in the list and shall remain
4 collectible as provided in this article. The failure to file the notice bars
5 any defense against the bonds except for the defense that the board did not
6 have authority to issue the bonds.

7 C. The clerk shall present the list to the district at its next
8 meeting after the return has been recorded. At any time after awarding a
9 contract for construction or acquisition, the district, by resolution, may
10 direct improvement bonds to be issued in an amount that does not exceed the
11 amount of unpaid assessments as may be shown on the certified list of unpaid
12 assessments. The resolution shall prescribe the maximum number and
13 denomination of the bonds and the times when payable, which shall be fixed so
14 that an approximately equal amount of principal is paid each year or any
15 approximately equal aggregate amount of principal and interest is paid each
16 year until the whole amount is paid. The bonds shall mature in a period that
17 does not exceed forty years and three months from the date of the bonds. The
18 denominations of the bonds shall be fixed by the district. The district may
19 provide in the form of the bond for redemption before maturity by giving such
20 notice as the district determines to be reasonable and by the payment of a
21 premium at redemption if the district determines a premium is advisable. The
22 resolution shall also fix the place, if any, other than the office of the
23 treasurer, at which the bonds and the interest are payable. The board may
24 issue fully registered bonds and may issue bonds registered in the nominee
25 name of a depository to provide for a book entry system to administer
26 registration and payment of principal, premium, if any, and interest on the
27 bonds.

28 D. The bonds shall be issued as of the date determined by the district
29 and shall bear interest from that date at the rate not to exceed that
30 specified in the resolution of intention. The bonds shall have semiannual
31 interest payments, the first of which is payable on January 1 or July 1, as
32 the case may be, occurring at least ninety days after the later of the date
33 of the bond or the expected completion of the work, and shall be for the
34 interest accrued at that time.

35 E. The due date of all bonds is January 1 or July 1, as stated on the
36 face of the bonds, in the years in which they become due, respectively.

37 F. The district may sell the bonds at public or private sale at a
38 price at, above or below par and accrued interest to the date of payment, and
39 at an interest rate not exceeding the maximum rate set in the resolution of
40 intention. If deemed necessary by the board of directors, a reserve fund may
41 be established either with proceeds from the sale of the bonds or by
42 increasing the collections of the annual installments of principal up to the
43 first ten years the bonds are outstanding, over and above the amounts
44 required to pay maturing principal on the bonds. The monies in the reserve
45 fund may be used only to cure deficits in the principal and interest funds or

1 to pay interest and principal on the final maturity or maturities of the
2 bonds.

3 G. The proceeds from the sale of the bonds shall be placed in a
4 special fund to be held by the treasurer and to be used to pay incidental
5 expenses and payments for construction or acquisition. If the district
6 received sealed proposals for construction of the flood protection facility,
7 the proceeds from the sale of the bonds shall be used to make semimonthly or
8 monthly payments to the contractor on a basis of ninety per cent of the value
9 of the work actually performed as estimated by the district or engineer
10 employed for those purposes to and including the fifteenth or last day of
11 each calendar month. The balance shall be paid after the district has
12 recorded a certificate of substantial completion of the flood protection
13 facility, in the same manner as the recording of the assessment. The
14 district shall record the certificate only after the work has been completed
15 to its satisfaction.

16 H. If contracting services are procured pursuant to title 34, chapter
17 6, article 1, proceeds from the sale of the bonds shall be used to make
18 monthly progress payments to the contractor as provided in section ~~34-607~~
19 ~~34-609~~, subsection B except that notwithstanding any provision of title 34,
20 the balance shall be paid after the work is substantially complete and the
21 district has recorded a certificate of substantial completion of the flood
22 protection facility in the same manner as the recording of the assessment.

23 I. The district shall mail a copy of the notice of completion to each
24 property owner in the same manner as the notice of hearing on the assessment.
25 Pending use of the bond proceeds, the treasurer may invest the proceeds in
26 any investments for which sinking funds of this state may be invested or in a
27 pooled investment fund established under section 35-326, except that if bond
28 anticipation notes have been issued, the bond proceeds or so much as is
29 necessary shall be used to redeem the notes.

30 J. Refunding bonds may be issued to refund all or any portion of an
31 issue of bonds issued and sold pursuant to this section in the manner
32 prescribed by title 35, chapter 3, article 4.

33 Sec. 33. Existing and future procurements

34 A. Any procurement that is conducted under any section of the Arizona
35 Revised Statutes that is amended by this act or that is conducted under any
36 rule, regulation or policy that is based on any section of the Arizona
37 Revised Statutes that is amended by this act and that is commenced by the
38 Arizona department of transportation under title 28, Arizona Revised
39 Statutes, an agent under title 34, Arizona Revised Statutes, a purchasing
40 agency under title 41, Arizona Revised Statutes, a school district or any
41 other public entity by publication of notice or issuance of a request for
42 qualifications before the effective date of this act shall be continued and
43 completed under the law in effect before the effective date of this act.

1 B. Any procurement that is conducted under any section of the Arizona
2 Revised Statutes that is amended by this act or that is conducted under any
3 rule, regulation or policy that is based on any section of the Arizona
4 Revised Statutes that is amended by this act and that is commenced by the
5 Arizona department of transportation under title 28, Arizona Revised
6 Statutes, an agent under title 34, Arizona Revised Statutes, a purchasing
7 agency under title 41, Arizona Revised Statutes, a school district or any
8 other public entity by publication of notice or issuance of a request for
9 qualifications after the effective date of this act shall be conducted
10 pursuant to the law as amended by this act, regardless of whether any
11 applicable rule, regulation or policy applicable to the Arizona department of
12 transportation, the agent, the purchasing agency, the school district or
13 other public entity has been amended to conform to the law as amended by this
14 act.