

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 155
HOUSE BILL 2304

AN ACT

AMENDING SECTIONS 34-103, 34-603, 34-605 AND 34-613, ARIZONA REVISED
STATUTES; RELATING TO PUBLIC BUILDINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 34-103, Arizona Revised Statutes, is amended to
3 read:

4 34-103. Employment of technical registrants for work on
5 public buildings and structures; direct selection;
6 final list selection; public competition

7 A. An agent shall procure professional services from a technical
8 registrant in the manner prescribed in chapter 6 of this title if ~~either~~
9 ~~of the following applies:~~

10 ~~1. the contract is with a technical registrant other than an~~
11 ~~architect and is for an amount of more than five hundred thousand dollars.~~

12 ~~2. The contract is with an architect and is for an amount of more~~
13 ~~than two hundred fifty thousand dollars.~~

14 B. An agent may procure professional services from a technical
15 registrant in the manner prescribed in chapter 6 of this title or as
16 prescribed in subsection D OF THIS SECTION if ~~either of the following~~
17 ~~applies:~~

18 ~~1. the contract is with a technical registrant other than an~~
19 ~~architect and is for an amount of five hundred thousand dollars or less.~~

20 ~~2. The contract is with an architect and is for an amount of two~~
21 ~~hundred fifty thousand dollars or less.~~

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

27 D. An agent may employ a technical registrant by direct selection,
28 by public competition pursuant to subsection G OF THIS SECTION or pursuant
29 to subsections E and F OF THIS SECTION if ~~either of the following applies:~~

30 ~~1. the contract is with a technical registrant other than an~~
31 ~~architect and is for an amount of five hundred thousand dollars or less.~~

32 ~~2. The contract is with an architect and is for an amount of two~~
33 ~~hundred fifty thousand dollars or less.~~

34 E. The agent may elect to employ a technical registrant or
35 technical registrants by encouraging persons or firms engaged in the
36 lawful practice of the profession to submit annually a statement of
37 qualifications and experience. If the agent elects to employ a technical
38 registrant or technical registrants by this method, the agent shall
39 initiate an appropriately qualified selection committee for each
40 procurement, which may include one contract or multiple contracts, in
41 accordance with rules adopted by the agent. The amount of each contract
42 in a single procurement under this subsection and subsection F OF THIS
43 SECTION shall not exceed the dollar amount limits in subsections B and D
44 OF THIS SECTION. The selection committee shall evaluate current
45 statements of qualifications and experience on file with the agent

1 together with those that may be submitted by other persons or firms
2 regarding the procurement. If possible and practicable, the selection
3 committee shall conduct interviews regarding the procurement and the
4 relative methods of furnishing the required services and, if possible,
5 shall select, in order of preference and based on criteria established and
6 published by the selection committee, one or more final lists of the
7 persons or firms deemed to be the most qualified to provide the services
8 required. The selection committee shall base the selection of each final
9 list and the order of preference on each final list on demonstrated
10 competence and qualifications only. The agent and the selection committee
11 shall not request or consider fees, price, man-hours or any other cost
12 information at any point in the selection process under this subsection,
13 including the selection of the persons or firms to be interviewed, the
14 selection of the persons and firms to be on a final list, in determining
15 the order of preference of persons and firms on a final list or for any
16 other purpose in the selection process. If the procurement is for:

17 1. A single contract or if the procurement is for multiple
18 contracts to be awarded to a single person or firm, there shall be one
19 final list of at least three but no more than five persons or firms.

20 2. Multiple contracts for different technical registrant services
21 to be awarded to separate persons or firms, there shall be a separate
22 final list for each type of technical registrant services and the number
23 of persons or firms on each final list shall be the number of contracts
24 for each type of technical registrant service plus another number that is
25 determined by the agent and that is not more than five.

26 3. Multiple contracts for similar technical registrant services to
27 be awarded to separate persons or firms, there shall be one final list and
28 the number of persons or firms on the final list shall be the number of
29 contracts plus another number that is determined by the agent and that is
30 not more than five.

31 F. After each final list is selected pursuant to subsection E **OF**
32 **THIS SECTION**, the agent shall enter into negotiations with the highest
33 qualified person or firm on each final list or, in the case of a final
34 list for multiple contracts to be awarded to separate persons or firms,
35 the agent shall enter into negotiations with a number of the highest
36 qualified persons or firms on a final list equal to the number of
37 contracts that may or will be awarded. The negotiations shall include
38 consideration of compensation and other contract terms that the agent
39 determines to be fair and reasonable to the agent. In making this
40 determination, the agent shall take into account the estimated value, the
41 scope, the complexity and the nature of the professional services to be
42 rendered. If the agent is not able to negotiate a satisfactory contract
43 with a person or firm with which the agent is negotiating at a price and
44 on other contract terms the agent determines to be fair and reasonable,
45 the agent shall formally terminate negotiations with that person or firm.

1 The agent may enter into negotiations with the next most qualified person
2 or firm on the final list in sequence until an agreement is reached or a
3 determination is made to reject all persons or firms on the final list.
4 If the agent terminates negotiations with a person or firm on a final list
5 and commences negotiations with another person or firm on a final list,
6 the agent shall not in that procurement recommence negotiations or enter
7 into the single contract or multiple contracts for the technical
8 registrant services covered by that final list with any person or firm on
9 that final list with whom the agent has terminated negotiations.

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

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

23 Sec. 2. Section 34-603, Arizona Revised Statutes, is amended to
24 read:

25 34-603. Procurement of professional services and
26 construction-manager-at-risk, design-build and
27 job-order-contracting construction services;
28 definition

29 A. Except for services that are under a single contract and that an
30 agent procures pursuant to section 34-103 or 34-606, an agent shall
31 procure a single contract for the following services pursuant to this
32 section:

- 33 1. Architect services.
- 34 2. Construction-manager-at-risk construction services.
- 35 3. Design-build construction services.
- 36 4. Engineer services.
- 37 5. Job-order-contracting construction services.
- 38 6. Landscape architect services.
- 39 7. Assayer services.
- 40 8. Geologist services.
- 41 9. Land surveying services.

42 B. An agent shall provide notice of each procurement of
43 professional services or construction services specified in this section
44 and shall award the single contract on the basis of demonstrated
45 competence and qualifications for the type of professional services or

1 construction services pursuant to the procedures prescribed in this
2 section.

3 C. In a procurement of a single contract for professional services
4 or construction services pursuant to this section:

5 1. The following requirements apply:

6 (a) The agent and the selection committee shall not request or
7 consider fees, price, man-hours or any other cost information at any point
8 in the selection process under this subsection or under subsection D of
9 this section, including the selection of persons or firms to be
10 interviewed, the selection of persons or firms to be on the final list, in
11 determining the order of preference of persons or firms on the final list
12 or for any other purpose in the selection process.

13 (b) In determining the persons or firms to participate in any
14 interviews and in determining the persons and firms to be on the final
15 list and their order on the final list, the selection committee shall use
16 and shall consider only the criteria and weighting of criteria specified
17 by the agent for that purpose as provided in this subsection. No other
18 factors or criteria may be used in the evaluation, determinations and
19 other actions.

20 (c) An agent is limited to one contract in each procurement under
21 this section. Alternatively:

22 (i) For construction-manager-at-risk construction services, an
23 agent may elect separate contracts for preconstruction services during the
24 design phase, for construction during the construction phase and for any
25 other construction services.

26 (ii) For design-build construction services, an agent may elect
27 separate contracts for preconstruction services and design services during
28 the design phase, for construction and design services during the
29 construction phase and for any other construction services.

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

32 (d) All construction-manager-at-risk construction services or
33 design-build construction services included in a procurement under
34 this section shall be limited to construction services to be performed at
35 a single location, a common location or, if the construction services are
36 all for a similar purpose, multiple locations. For
37 construction-manager-at-risk construction services and design-build
38 construction services to be performed at multiple locations:

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

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

1 (e) If the agent enters into the first contract for preconstruction
2 services, construction services or professional services as the result of
3 the procurement, the procurement under this section ends. After execution
4 of that first contract the agent may not use the procurement or the
5 existing final list in the procurement as the basis for entering into a
6 contract with any other person or firm that participated in the
7 procurement.

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

12 (i) If a smaller number of persons or firms respond to the request
13 for qualifications or if one or more persons or firms drop out of the
14 procurement so that there is a smaller number of persons or firms
15 participating in the procurement, the agent may elect to proceed with the
16 procurement with the participating persons or firms if there are at least
17 two participating responsive and responsible persons or firms.
18 Alternatively, the agent may elect to terminate the procurement.

19 (ii) As to a request for qualifications for professional services
20 or construction services to be negotiated pursuant to subsection E of this
21 section only, if only one responsive and responsible person or firm
22 responds to the request for qualifications or, if one or more persons or
23 firms drop out of the procurement so that only one responsive and
24 responsible person or firm remains in the procurement, the agent may elect
25 to proceed with the procurement with only one person or firm if the agent
26 determines in writing that the fee negotiated pursuant to subsection E of
27 this section is fair and reasonable and that either other prospective
28 persons or firms had reasonable opportunity to respond or there is not
29 adequate time for a resolicitation.

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

36 2. An agent shall issue a request for qualifications for each
37 procurement and publish notice of the request for qualifications. This
38 notice shall be published by advertising in a newspaper of general
39 circulation in the county in which the agent is located for two
40 consecutive publications if it is a weekly newspaper or for two
41 publications that are at least six but no more than ten days apart if it
42 is a daily newspaper. The request for qualifications shall:

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

1 (b) In a procurement of a contract to be negotiated under
2 subsection E of this section, state that there will be a single final list
3 of at least three and not more than five persons or firms. In a
4 procurement in which the contract will be awarded under subsection F of
5 this section, **THE REQUEST FOR QUALIFICATIONS SHALL** state that there will
6 be a single final list and that the number of persons or firms on the
7 final list will be three.

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 for construction services one of the criteria shall be the
11 person's or firm's subcontractor selection plan or procedures to implement
12 the agent's subcontractor selection plan. All selection criteria under
13 this subsection shall be factors that demonstrate competence and
14 qualifications for the type of professional services or construction
15 services included in the procurement. If:

16 (i) Interviews will be held, the request for qualifications shall
17 state the selection criteria and relative weight of the selection criteria
18 to be used in selecting the persons or firms to be interviewed and the
19 request for qualifications may state the selection criteria and relative
20 weight of the selection criteria to be used in selecting the persons or
21 firms on the final list and in determining their order on the final list.
22 The final list selection criteria and relative weights may be different
23 than the selection criteria and relative weights used to determine the
24 persons or firms to be interviewed. The request for qualifications shall
25 also state whether the agent will select the persons or firms on the final
26 list and their order on the final list solely through the results of the
27 interview process or through the combined results of both the interview
28 process and the evaluation of statements of qualifications and performance
29 data submitted in response to the agent's request for qualifications.

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

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

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

38 (i) A requirement that each person or firm submit a proposed
39 subcontractor selection plan and a requirement that the proposed
40 subcontractor selection plan must select subcontractors based on
41 qualifications alone or on a combination of qualifications and price and
42 shall not select subcontractors based on price alone.

43 (ii) A subcontractor selection plan adopted by the agent that
44 applies to the person or firm that is selected to perform the construction
45 services and that requires subcontractors to be selected based on

1 qualifications alone or on a combination of qualifications and price and
2 not based on price alone and a requirement that each person or firm must
3 submit a description of the procedures it proposes to use to implement the
4 agent's subcontractor selection plan.

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

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

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

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

17 (iii) A schedule for the construction services to be performed at
18 each location that shows the agent's intent to commence all construction
19 at each location within thirty months after execution of the first
20 contract for preconstruction services or other construction services at
21 any of the locations.

22 3. An agent shall initiate an appropriately qualified selection
23 committee for each request for qualifications. The agent shall ensure
24 that the selection committee members are competent to serve on the
25 selection committee. Each selection committee must include one employee
26 of the agent or an agent representative who is appointed by the agent. If
27 the agent is procuring professional services, the agent shall determine
28 the number and qualifications of the selection committee members. A
29 selection committee for the procurement of construction services shall not
30 have more than seven members, except that, if the contract involves the
31 agent and additional governmental or private participants, the number of
32 members of the selection committee shall be increased by one for each
33 additional participant, except that the maximum number of members of the
34 selection committee is nine. The selection committee for construction
35 services shall include at least one person who is a senior management
36 employee of a licensed contractor and one person who is an architect or an
37 engineer who is registered pursuant to section 32-121. These members may
38 be employees of the agent or outside consultants. Outside contractors,
39 architects and engineers serving on a selection committee shall not
40 receive compensation from the agent for performing this service, but the
41 agent may elect to reimburse outside contractors, architects and engineers
42 for travel, lodging and other expenses incurred in connection with service
43 on a selection committee. A person who is a member of a selection
44 committee shall not be a contractor under a contract awarded under the
45 procurement or provide any professional services, construction,

1 construction services, materials or other services under the contract.
2 The selection committee and the agent shall do the following:

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

4 (i) The selection committee shall determine the persons or firms to
5 be interviewed by evaluating the statements of qualifications and
6 performance data that are submitted in response to the agent's request for
7 qualifications based only on the selection criteria and relative weight of
8 the selection criteria stated in the request for qualifications to be used
9 to determine the persons or firms to be interviewed.

10 (ii) If the selection criteria and relative weight of the selection
11 criteria to be used by the selection committee to select the persons or
12 firms on the final list and to determine their order on the final list are
13 not included in the request for qualifications, before the interviews are
14 held the agent shall distribute to the persons or firms to be interviewed
15 the selection criteria and relative weight of the selection criteria to be
16 used to select the persons or firms on the final list and to determine
17 their order on the final list. These selection criteria and relative
18 weight may be different than the selection criteria and relative weight
19 used to determine the persons or firms to be interviewed.

20 (iii) The selection committee shall conduct interviews with the
21 number of persons or firms to be interviewed as stated in the request for
22 qualifications regarding the professional services or construction
23 services and the relative methods of approach for furnishing the required
24 professional services or construction services.

25 (b) Based only on the selection criteria and relative weight of the
26 selection criteria specified as provided in this subsection for selection
27 of the persons or firms on the final list and their order on the final
28 list, the selection committee shall select the persons or firms for the
29 final list and, in the case of a final list for a contract that will be
30 negotiated under subsection E of this section, rank the persons or firms
31 on the final list in order of preference.

32 (c) If the contract will be negotiated under subsection E of this
33 section, before or at the same time as the agent notifies the highest
34 ranking person or firm on the final list that it is the highest ranking
35 person or firm, the agent shall send actual notice to each of the
36 following that it is not the highest person or firm on the final list or
37 that another person or firm is the highest ranking person or firm on the
38 final list:

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

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

43 (d) If the contract will be awarded under subsection F of this
44 section, before or at the same time as the agent notifies the persons or
45 firms on the final list that they are on the final list, the agent shall

1 send actual notice to each of the following persons or firms that they are
2 not on the final list or that other persons or firms are on the final
3 list:

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

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

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

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

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

14 2. The negotiations shall include consideration of compensation and
15 other contract terms that the agent determines to be fair and reasonable
16 to the agent. In making this decision, the agent shall take into account
17 the estimated value, the scope, the complexity and the nature of the
18 professional services or construction services to be rendered.

19 3. The agent shall enter into negotiations with the highest
20 qualified person or firm on the final list.

21 4. If the agent is not able to negotiate a satisfactory contract
22 with the highest qualified person or firm on the final list, at
23 compensation and on other contract terms the agent determines to be fair
24 and reasonable, the agent shall formally terminate negotiations with that
25 person or firm. The agent shall then undertake negotiations with the next
26 most qualified person or firm on the final list in sequence until an
27 agreement is reached or a determination is made to reject all persons or
28 firms on the final list.

29 5. If in a procurement under this section the agent terminates
30 negotiations with a person or firm on the final list and commences
31 negotiations with another person or firm on the final list, the agent
32 shall not in that procurement recommence negotiations or enter into a
33 contract for the construction services or professional services covered by
34 the final list with any person or firm on the final list with whom the
35 agent has terminated negotiations.

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

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

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

1 3. The request for proposals shall include:

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

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

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

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

13 (ii) Offeror qualifications.

14 (iii) Offeror financial capacity.

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

16 (v) For design-build construction services only, if the request for
17 proposals specifies that the agent will spend its project budget and not
18 more than its project budget and is seeking the best proposal for the
19 project budget, compliance of the offeror's price or life cycle price for
20 procurements that include maintenance services, operations services or
21 finance services with the agent's budget as prescribed in the request for
22 proposals.

23 (vi) For design-build construction services if the request for
24 proposals does not contain the specifications prescribed in item (v) **OF**
25 **THIS SUBDIVISION** and for job-order-contracting construction services, the
26 price or life cycle price for procurements that include maintenance
27 services, operations services or finance services.

28 (vii) An offeror quality management plan.

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

32 (d) For design-build construction services only, the design
33 requirements.

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

39 (f) A statement that in applying the scoring method the selection
40 committee will separately evaluate the technical proposal and the price
41 proposal and will evaluate and score the technical proposal before opening
42 the price proposal.

43 (g) If the agent conducts discussions pursuant to paragraph 5 of
44 this subsection, a statement that discussions will be held and a

1 requirement that each offeror submit a preliminary technical proposal
2 before the discussions are held.

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

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

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

21 7. Before opening any price proposal, the selection committee shall
22 open the final technical proposals, evaluate the final technical proposals
23 and score the final technical proposals using the scoring method in the
24 request for proposals. No other factors or criteria may be used in the
25 evaluation and scoring.

26 8. After completion of the evaluation and scoring of all final
27 technical proposals, the selection committee shall open the price
28 proposals, evaluate the price proposals, score the price proposals and
29 complete the scoring of the entire proposals using the scoring method in
30 the request for proposals. No other factors or criteria may be used in
31 the evaluation and scoring.

32 9. The agent shall award the contract or contracts to the
33 responsive and responsible offeror whose proposal receives the highest
34 score under the method of scoring in the request for proposals. No other
35 factors or criteria may be used in the evaluation. Before or at the same
36 time as the agent notifies the winning offeror that it has won, the agent
37 shall send actual notice to each other offeror either that the offeror has
38 not won or that another offeror has won.

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

42 11. For design-build construction services only, the agent shall
43 award a stipulated fee equal to a percentage, as prescribed in the request
44 for proposals, of the agent's project final budget for design and
45 construction, as prescribed in the request for proposals, but not less

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

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

21 1. For each request for qualifications procurement process under
22 subsection C or ~~pursuant to~~ subsection K, paragraph 2 of this section:

23 (a) If interviews were not held:

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

27 (ii) The final list.

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

31 (iv) 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
33 overall rank or score.

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

42 (b) If interviews were held:

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

1 (ii) The final list.

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

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

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

16 (vi) A list of the selection criteria and relative weight of the
17 selection criteria used to select the persons or firms for the short list
18 to be interviewed.

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

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

32 2. For each request for proposals procurement process under
33 subsection F or subsection K, paragraph 3 of this section:

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

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

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

43 (d) A document or documents that show the final score on each
44 factor in the scoring method in the request for proposals of each offeror
45 that submitted a proposal and that support the final overall scores of the

1 offerors that submitted proposals. At the election of the agent, this
2 documentation may be in the form of a consolidated scoring sheet for the
3 entire selection committee, in the form of individual scoring sheets for
4 individual selection committee members or any other form as determined by
5 the agent.

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

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

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

28 3. The proposals submitted under subsection F or subsection K,
29 paragraph 3 of this section shall not be made available to the public
30 until after the agent has entered into a contract or terminated the
31 procurement. At a minimum the proposals submitted under subsection F or
32 subsection K, paragraph 3 of this section that the agent is required to
33 retain under subsection G of this section shall be made available to the
34 public after the agent has entered into a contract or terminated the
35 procurement.

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

39 5. The document or documents prescribed in subsection G, paragraph
40 1, subdivision (a), item (v) and subdivision (b), items (v) and (viii) and
41 paragraph 2, subdivision (d) of this section are available to the extent
42 provided in title 39, chapter 1, article 2.

43 I. An agent may cancel a request for qualifications or a request
44 for proposals, reject in whole or in part any or all submittals or
45 proposals, or determine not to enter into a contract as specified in the

1 solicitation if the agent determines in the agent's absolute and sole
2 discretion that the action is in the best interest of the agent. The
3 agent shall make the reasons for cancellation, rejection or determination
4 not to enter into a contract part of the contract file.

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

11 K. Notwithstanding any other law, in a procurement of a single
12 contract for construction-manager-at-risk construction services for
13 horizontal construction under this section when the ~~United States~~ federal
14 aviation administration or the ~~United States~~ federal transit
15 administration is a source of monies for the project and price competition
16 is required by the funding federal agency or applicable federal law, rules
17 or regulations, an agent that is a city with a population in excess of one
18 million persons or an agent that is a separate legal entity formed under
19 section 11-952 by a city with a population in excess of one million
20 persons and that is designated as a subgrantee by a city with a population
21 in excess of one million persons, ~~may~~ may do a two-step competition in
22 accordance with the following:

23 1. Except as provided in paragraphs 2 and 3 of this subsection, all
24 provisions of law applicable to construction-manager-at-risk construction
25 services apply to construction-manager-at-risk CONSTRUCTION services for
26 horizontal construction procured under this subsection, including the
27 provisions applicable to horizontal construction. The requirements in
28 ~~subsection B of~~ section 34-605, SUBSECTION B apply only if the contractor
29 provides preconstruction services. Bid security is not required under
30 section 34-608 for construction-manager-at-risk construction services for
31 horizontal construction procured under this subsection, but an agent may
32 elect to require bid security in which event the bid security process and
33 requirements shall be as set forth in section 34-608.

34 2. In the first step of the two-step competition for procurement of
35 construction-manager-at-risk construction services for horizontal
36 construction, the agent shall follow the request for qualifications
37 process and the requirements in subsection C of this section. For
38 purposes of applying the requirements in subsection C, paragraph 1,
39 subdivision (f), item (ii), ~~subsection C,~~ paragraph 2, subdivision (b) and
40 ~~subsection C,~~ paragraph 3, subdivisions (b), (c) and (d) of this section
41 only, a procurement under this subsection shall be deemed to be
42 procurement of a contract to be awarded under subsection F of this section
43 and not of a contract to be negotiated under subsection E of this section.

1 3. In the second step of the two-step competition:

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

4 (b) The agent shall issue a request for proposals to the offerors
5 on the final list developed pursuant to subsection C of this section.

6 (c) The request for proposals shall include:

7 (i) A statement that one contract may or will be awarded and that
8 one offeror may or will be awarded the contract.

9 (ii) A description of the construction-manager-at-risk construction
10 services for horizontal construction to be performed under the contract.

11 (iii) A requirement that each offeror submit separately a
12 qualitative and technical proposal and a price proposal and that the
13 offeror's entire proposal be responsive to the requirements in the request
14 for proposals.

15 (iv) The required contents of the qualitative and technical
16 proposals and the price proposals.

17 (v) Information to be used by offerors to prepare the qualitative
18 and technical proposals and the price proposals.

19 (vi) A statement that in applying the scoring method the selection
20 committee will evaluate and score the qualitative and technical proposals
21 before opening the price proposals.

22 (vii) A statement that the agent will use the scoring method
23 described in the request for proposals to determine the winning offeror
24 and that the winning offeror will be the offeror whose proposal receives
25 the highest number of points under the scoring method.

26 (viii) A description of the scoring method. The scoring method
27 shall be a best-value method in which the agent establishes criteria to
28 score the qualitative and technical proposal and separate criteria to
29 score the price proposal and the number of points assigned to each
30 criteria. The number of points assigned to price criteria shall not
31 exceed ten ~~per cent~~ PERCENT of the total number of points in the scoring
32 method.

33 (ix) If the agent elects to conduct discussions pursuant to
34 ~~paragraph 3,~~ subdivision (e) of this ~~subsection~~ PARAGRAPH, a statement
35 that discussions will be held and a requirement that each offeror submit a
36 preliminary qualitative and technical proposal before the discussions are
37 held.

38 (d) If the agent determines to conduct discussions pursuant to
39 ~~paragraph 3,~~ subdivision (e) of this ~~subsection~~ PARAGRAPH, each offeror
40 shall submit a preliminary qualitative and technical proposal to the agent
41 before those discussions are held.

42 (e) If determined by the agent and included by the agent in the
43 request for proposals, the selection committee shall conduct discussions
44 with all offerors solely about their preliminary qualitative and technical
45 proposals. Discussions shall be for the purpose of clarification to

1 ensure full understanding of, and responsiveness to, the solicitation
2 requirements, other than price. Offerors shall be accorded fair treatment
3 with respect to any opportunity for discussion and for clarification by
4 the selection committee. Revision of preliminary qualitative and
5 technical proposals shall be permitted after submission of preliminary
6 qualitative and technical proposals and before scoring of proposals for
7 the purpose of obtaining best and final proposals. In conducting any
8 discussions, information derived from the preliminary qualitative and
9 technical proposals submitted by competing offerors shall not be disclosed
10 to other competing offerors. Price shall not be part of the discussions.

11 (f) After completion of any discussions pursuant to ~~paragraph 3,~~
12 subdivision (e) of this ~~subsection~~ PARAGRAPH or if no discussions are
13 held, each offeror shall submit separately the offeror's final qualitative
14 and technical proposal and its price proposal.

15 (g) In evaluating and scoring the offerors' proposals the selection
16 committee shall use the scoring method specified in the request for
17 proposals.

18 (h) Before opening any price proposal, the selection committee
19 shall open the final qualitative and technical proposals, evaluate the
20 final qualitative and technical proposals and score the final qualitative
21 and technical proposals using the qualitative and technical criteria and
22 assigned points in the scoring method in the request for proposals. No
23 other factors or criteria may be used in the evaluation and scoring.

24 (i) After completion of the evaluation and scoring of all final
25 qualitative and technical proposals, the selection committee shall open
26 the price proposals and score the price proposals using the price criteria
27 and assigned points in the scoring method in the request for proposals.
28 No other factors or criteria may be used in the evaluation and scoring.

29 (j) After evaluating and scoring the price proposals, the selection
30 committee shall add the qualitative and technical proposal score and the
31 price proposal score of each offeror together for a total score. The
32 responsive and responsible offeror with the highest total score is the
33 winning offeror.

34 (k) The agent shall promptly notify the winning offeror that it is
35 the winner. Before or at the same time as the agent notifies the winning
36 offeror that it is the winner, the agent shall send actual notice to each
37 other offeror either that the offeror is not the winner or that another
38 offeror is the winner.

39 (l) The contract or contracts file shall contain the basis on which
40 the award is made, including at a minimum the information and documents
41 required under subsection G of this section.

42 4. Notwithstanding this subsection, an agent shall not procure any
43 construction-manager-at-risk construction services for horizontal
44 construction pursuant to this subsection after June 30, ~~2018~~ 2025. For
45 the purposes of this paragraph, an agent procures

1 construction-manager-at-risk construction services for horizontal
2 construction pursuant to this subsection when the contract for the
3 construction-manager-at-risk construction services for horizontal
4 construction is executed by the agent and the contractor. If a contract
5 is executed for construction-manager-at-risk construction services for
6 horizontal construction procured pursuant to this subsection on or before
7 June 30, ~~2018~~ 2025, construction services under the contract may be
8 rendered in whole or in part after June 30, ~~2018~~ 2025.

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

13 Sec. 3. Section 34-605, Arizona Revised Statutes, is amended to
14 read:

15 34-605. Requirements applicable to construction services and
16 professional services and to contracts for
17 construction services and professional services;
18 definition

19 A. The requirements prescribed in this section apply to each
20 contract entered into as the result of a procurement under section 34-603,
21 34-604 or 34-606 and to the professional services and construction
22 services included in each procurement under section 34-603, 34-604 or
23 34-606.

24 B. If a procurement under section 34-603 is for
25 construction-manager-at-risk construction services or design-build
26 construction services to be contracted pursuant to section 34-603,
27 subsection E or if a procurement under section 34-606 is for
28 construction-manager-at-risk construction services or design-build
29 construction services, the agent shall enter into a written contract with
30 the contractor for preconstruction services under which the agent shall
31 pay the contractor a fee for preconstruction services in an amount agreed
32 by the agent and the contractor, and the agent shall not request or obtain
33 a fixed price or a guaranteed maximum price for the construction from the
34 contractor or enter into a construction contract with the contractor until
35 after the agent has entered into the written contract for preconstruction
36 services and a preconstruction services fee.

37 C. If a contract for construction services is entered into as the
38 result of a procurement under section 34-603, 34-604 or 34-606,
39 construction shall not commence until the agent and contractor agree in
40 writing on either a fixed price that the agent will pay for the
41 construction to be commenced or a guaranteed maximum price for the
42 construction to be commenced. The construction to be commenced may be the
43 entire project or may be one or more phased parts of the project.

44 D. A contract for professional services entered into as the result
45 of a procurement under section 34-603, 34-604 or 34-606 shall have a term

1 not exceeding five years after the date of contract award by the agent of
2 the first contract under the procurement, except that the contract may
3 continue in effect after the five year term for professional services on
4 projects on which the rendering of professional services commences within
5 the five year term.

6 E. Notwithstanding any other law:

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

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

15 F. For job-order-contracting construction services only:

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

22 2. If the contractor subcontracts or intends to subcontract part or
23 all of the work under a job order and if the job-order-contracting
24 construction services contract includes descriptions of standard
25 individual tasks, standard unit prices for standard individual tasks and
26 pricing of job orders based on the number of units of standard individual
27 tasks in the job order:

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

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

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

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

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

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

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

4 G. The following apply to horizontal construction:

5 1. Notwithstanding this chapter, an agent shall not procure any
6 horizontal construction using the construction-manager-at-risk,
7 design-build or job-order-contracting method of project delivery after
8 June 30, ~~2020~~ 2025. For purposes of this paragraph, an agent procures
9 horizontal construction when the contract for the construction services is
10 executed by the agent and the contractor for the
11 construction-manager-at-risk, design-build or job-order-contracting
12 construction services. If a contract is executed for construction
13 services on or before June 30, ~~2020~~ 2025, construction services under the
14 contract may be rendered in whole or in part after June 30, ~~2020~~ 2025.

15 2. For each horizontal construction project under a design-build or
16 construction-manager-at-risk construction services contract, the licensed
17 contractor performing the contract shall perform, with the contractor's
18 own organization, construction work that amounts to not less than
19 forty-five ~~per cent~~ PERCENT of the total contract price for the
20 construction, except that for light rail the self-performance percentage
21 shall be not less than thirty ~~per cent~~ PERCENT.

22 3. A project is horizontal construction if more than one-half of
23 the total contract price for the construction is for horizontal
24 construction. Project elements shall not be artificially added in order
25 to make a project not horizontal construction and shall not be
26 artificially deleted in order to make a project horizontal construction.

27 4. The total contract price for the construction does not include
28 the cost of preconstruction services, design services or any other related
29 services or the cost to procure any right-of-way or other cost of
30 condemnation.

31 H. Notwithstanding any contrary provision of this section or this
32 title, an agent shall not:

33 1. Enter into a contract as contractor to provide
34 construction-manager-at-risk construction services, design-build
35 construction services or job-order-contracting construction services.

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

41 I. The prohibitions prescribed in subsection H of this section do
42 not prohibit an agent from providing construction for itself as provided
43 by law.

44 J. The agent shall include in each contract for construction
45 services the full street or physical address of each separate location at

1 which the construction will be performed and a requirement that the
2 contractor and each subcontractor at any level include in each of its
3 subcontracts the same address information. The contractor and each
4 subcontractor at any level shall include in each subcontract the full
5 street or physical address of each separate location at which construction
6 work will be performed.

7 K. The following provisions apply to all construction services
8 procured under this chapter:

9 1. The contractor performing the construction services is permitted
10 to self-perform part of the construction work if and to the extent agreed
11 in writing by the agent and the contractor. The agent may use methods
12 other than competitive bidding to assure itself that the price the agent
13 pays to the contractor for self-performed work is fair and
14 reasonable. Permitted methods to evaluate fairness and reasonableness of
15 the price of self-performed work include evaluation of the contractor's
16 proposed scope of work and price for self-performed work by an estimator
17 who is hired and paid by the agent, who is independent of the contractor
18 and who may be an employee of the agent. Although the agent may elect to
19 so require, nothing in this chapter, this title or any other law shall be
20 construed or interpreted to require the agent to require a contractor
21 desiring to self-perform part of the construction work to competitively
22 bid that part of the construction work against other contractors in a bid
23 competition.

24 2. The following requirements apply to the construction work to be
25 performed by subcontractors and do not apply to construction work that the
26 agent and the contractor agree in writing will be self-performed by the
27 contractor:

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

36 (b) The agent shall include in each contract:

37 (i) If the agent included its subcontractor selection plan in the
38 request for qualifications, the agent's subcontractor selection plan and
39 the procedures to implement the agent's subcontractor selection plan
40 proposed by the selected person or firm in submitting its qualifications
41 with those modifications to the procedures as the agent and the selected
42 person or firm agree.

43 (ii) If the agent did not include its subcontractor selection plan
44 in the request for qualifications, the subcontractor selection plan
45 proposed by the selected person or firm in submitting its qualifications

1 with those modifications as the agent and the selected person or firm
2 agree.

3 (c) In making the selection of subcontractors, the person or firm
4 selected to perform the construction services shall use the subcontractor
5 selection plan and any procedures included in its contract.

6 L. If the agent does not have a procurement protest policy and
7 procedures that have been formally adopted and published by the agent, for
8 protests relating to procurements under this chapter the agent shall
9 follow the procurement protest policy and procedures of the department of
10 administration. The agent shall process all protests relating to
11 procurements under this section. If the agent does have a procurement
12 protest policy and procedures that have been formally adopted and
13 published by the agent, the agent may choose to make information relating
14 to each procurement available earlier than required under section 34-603,
15 subsection H and section 34-604, subsection H if the agent determines the
16 release of the information is necessary to adequately follow and manage
17 its procurement protest policy and procedures.

18 M. For the purposes of this section, "professional services"
19 includes architect services, engineer services, landscape architect
20 services, assayer services, geologist services and land surveying services
21 and any combination of those services.

22 Sec. 4. Section 34-613, Arizona Revised Statutes, is amended to
23 read:

24 34-613. Failure to comply: civil penalty

25 A. An agent who knowingly and intentionally violates this chapter
26 is liable for a civil penalty:—

27 ~~1. Except as provided in paragraph 2, of not more than five~~
28 ~~thousand dollars for each violation.~~

29 ~~2. On the effective date of this amendment to this section until~~
30 ~~July 1, 2009, of not more than:~~

31 ~~(a)~~ 1. Ten thousand dollars for a first violation.

32 ~~(b)~~ 2. Twenty-five thousand dollars for a second violation.

33 ~~(c)~~ 3. Seventy-five thousand dollars for a third violation.

34 B. All monies collected from the civil penalty shall be deposited,
35 pursuant to sections 35-146 and 35-147, in the state general fund. The
36 attorney general shall bring an action to recover the penalty in the name
37 of this state in the superior court in the county in which the violation
38 occurred. The attorney general shall bring any appropriate civil action
39 to enjoin a threatened or pending violation of this chapter.

40 Sec. 5. Retroactivity

41 Section 34-603, Arizona Revised Statutes, as amended by this act,
42 applies retroactively to from and after June 29, 2018.

H.B. 2304

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FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2018.