

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       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.

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.

(iii) If a person or firm on the final list withdraws or is removed from the procurement and the selection committee determines that it is in the best interest of the agent, the selection committee may replace that person or firm on the final list with another person or firm that submitted qualifications in the procurement and that is selected by the 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.

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

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.

(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.

(viii) A document or documents that show the final score or rank on each selection ~~criteria~~ CRITERION of each person or firm that submitted qualifications and that support the final overall rankings and scores of the persons or firms that submitted qualifications in the selection of the persons or firms to be on the short list to be interviewed. At the election of the agent, this documentation may be in the form of a consolidated scoring sheet for the entire selection committee, in the form of individual scoring sheets for the individual selection committee 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 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.

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.

APPROVED BY THE GOVERNOR APRIL 10, 2018.

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