

Senate Engrossed
procurement; final list; number

State of Arizona
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2021

CHAPTER 331
SENATE BILL 1349

AN ACT

AMENDING SECTION 41-2579, ARIZONA REVISED STATUTES; RELATING TO THE
PROCUREMENT CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-2579, Arizona Revised Statutes, is amended to
3 read:

4 41-2579. Procurement of multiple contacts for certain
5 job-order-contracting construction services and
6 certain professional services; definition

7 A. Except as authorized in this section and in sections 41-2535,
8 41-2536, 41-2537 and 41-2581, a purchasing agency shall not procure in a
9 single procurement multiple contracts for construction services or
10 professional services. In a procurement under this section, there is a
11 single procurement process for all of the multiple contracts included in
12 the procurement. A purchasing agency may procure under this section:

13 1. Multiple contracts for similar job-order-contracting
14 construction services to be awarded to separate persons or firms.

15 2. Multiple contracts for professional services to be awarded to
16 separate persons or firms or to be awarded to a single person or firm as
17 specified in the request for qualifications.

18 B. A purchasing agency shall provide notice of each procurement
19 under this section and shall award contracts on the basis of demonstrated
20 competence and qualifications for the type of professional services or
21 construction services pursuant to the procedures prescribed in this
22 section.

23 C. In a procurement pursuant to this section:

24 1. The following requirements apply:

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

32 (b) In determining the persons or firms to participate in any
33 interviews and in determining the persons and firms to be on a final list
34 and their order on a final list, the selection committee shall use and
35 shall consider only the criteria and weighting of criteria specified by
36 the purchasing agency for that purpose as provided in this subsection. No
37 other factors or criteria may be used in the evaluation, determinations
38 and other actions.

39 (c) If the purchasing agency enters into the number of multiple
40 contracts being procured for job-order-contracting construction services
41 or professional services, a procurement under this section ends. After
42 that time the purchasing agency may not use the procurement or any
43 existing final list in the procurement as the basis for entering into a
44 replacement contract with any other person or firm that participated in
45 the procurement.

1 (d) Notwithstanding any other provision of this section specifying
2 the number of persons or firms to be interviewed, the number of persons or
3 firms to be on a final list or any other numerical specification in this
4 section:

5 (i) If a smaller number of persons or firms respond to the request
6 for qualifications or if one or more persons or firms drop out of the
7 procurement so that there is a smaller number of persons or firms
8 participating in the procurement, the purchasing agency, as the purchasing
9 agency determines necessary or appropriate, may elect to proceed with the
10 procurement with the participating persons or firms if there are at least
11 two participating responsive and responsible persons or firms.
12 Alternatively, the purchasing agency may elect to terminate the
13 procurement.

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

25 (iii) If a person or firm on a final list withdraws or is removed
26 from the procurement and the selection committee determines that it is in
27 the best interest of this state, the selection committee may replace that
28 person or firm on the final list with another person or firm that
29 submitted qualifications in the procurement and that is selected by the
30 selection committee as the next most qualified.

31 2. The purchasing agency shall issue a request for qualifications
32 for each procurement and give adequate public notice of the request for
33 qualifications in the same manner as provided in section 41-2533. The
34 publication shall include the fact that multiple contracts may or will be
35 awarded, shall state the number of contracts that may or will be awarded
36 and shall describe the professional services or job-order-contracting
37 construction services to be performed under each contract. The request
38 for qualifications shall:

39 (a) State the following information about the contracts that may or
40 will be awarded:

41 (i) If the request for qualifications is for multiple contracts for
42 similar job-order-contracting construction services to be awarded to
43 separate persons or firms, that multiple contracts for similar
44 job-order-contracting construction services may or will be awarded, the
45 number of contracts that may or will be awarded, the services to be

1 performed under each of the multiple contracts and that each of the
2 multiple contracts will be awarded to a separate person or firm.

3 (ii) If the request for qualifications is for multiple contracts
4 for professional services, that multiple contracts for professional
5 services may or will be awarded, the number of contracts that may or will
6 be awarded, the services to be performed under each of the multiple
7 contracts and either that each of the multiple contracts will be awarded
8 to a separate person or firm or that all of the multiple contracts will be
9 awarded to the same person or firm.

10 (b) State as to final lists:

11 (i) In a procurement of multiple contracts for professional
12 services to be awarded to a single person or firm, that there will be a
13 single final list of ~~at least three and~~ not more than ~~five~~ TEN persons or
14 firms.

15 (ii) In a procurement for multiple contracts for similar
16 job-order-contracting construction services to be awarded to separate
17 persons or firms or in a procurement for multiple contracts for similar
18 professional services to be awarded to separate persons or firms, that
19 there will be a single final list and the number of persons or firms on
20 the final list, which shall be the sum of the number of contracts that may
21 or will be awarded and a number that is determined by the purchasing
22 agency and that is not more than ~~five~~ TEN.

23 (iii) In a procurement for multiple contracts for different
24 professional services to be awarded to separate persons or firms, that
25 there will be a separate final list for each type of professional services
26 and that the number of persons or firms on each final list will be the
27 number of contracts that may or will be awarded for each type of
28 professional services and a number that is determined by the purchasing
29 agency and that is not more than ~~five~~ TEN.

30 (c) As prescribed below, state the selection criteria and relative
31 weight of the selection criteria to be used by the selection committee,
32 except that in a procurement for multiple contracts for
33 job-order-contracting construction services to be awarded to separate
34 persons or firms one of the criteria shall be the person's or firm's
35 subcontractor selection plan or procedures to implement the purchasing
36 agency's subcontractor selection plan. All selection criteria under this
37 subsection shall be factors that demonstrate competence and qualifications
38 for the type of professional services or job-order-contracting
39 construction services included in the procurement. If:

40 (i) Interviews will be held, the request for qualifications shall
41 state the selection criteria and relative weight of the selection criteria
42 to be used in selecting the persons or firms to be interviewed and the
43 request for qualifications may state the selection criteria and relative
44 weight of the selection criteria to be used in selecting the persons or
45 firms on each final list and in determining their order on each final

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

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

14 (d) If the purchasing agency will hold interviews as part of the
15 selection process:

16 (i) In a procurement of multiple contracts for professional
17 services to be awarded to the same person or firm, state that interviews
18 will be held and that the interviews will be with ~~at least three but~~ not
19 more than ~~five~~ TEN persons or firms.

20 (ii) In a procurement of multiple contracts for similar
21 job-order-contracting construction services to be awarded to separate
22 persons or firms or in a procurement of multiple contracts for similar
23 professional services to be awarded to separate persons or firms, state
24 that interviews will be held and that the interviews will be with a
25 specified number of persons or firms. The specified number shall be
26 stated in the request for qualifications, shall be determined by the
27 purchasing agency and shall be ~~the sum of the number of contracts that may~~
28 ~~or will be awarded and a number that is determined by the purchasing~~
29 ~~agency and that is~~ not more than ~~five~~ TEN PERSONS OR FIRMS.

30 (iii) In a procurement of multiple contracts for different
31 professional services to be awarded to separate persons or firms, state
32 that interviews will be held and that the interviews will be with a
33 specified number of persons or firms. The specified number shall be
34 stated in the request for qualifications, shall be determined by the
35 purchasing agency, ~~shall be at least three times the number of contracts~~
36 ~~that may or will be awarded and shall not be more than five times the~~
37 ~~number of contracts that may or will be awarded~~ AND SHALL BE NOT MORE THAN
38 TEN PERSONS OR FIRMS.

39 (e) For procurements of multiple contracts for
40 job-order-contracting construction services to be awarded to separate
41 persons or firms, include either:

42 (i) A requirement that each person or firm submit a proposed
43 subcontractor selection plan and a requirement that the proposed
44 subcontractor selection plan must select subcontractors based on

1 qualifications alone or on a combination of qualifications and price and
2 shall not select subcontractors based on price alone.

3 (ii) A subcontractor selection plan adopted by the purchasing
4 agency that applies to the person or firm that is selected to perform the
5 job-order-contracting construction services and that requires
6 subcontractors to be selected based on qualifications alone or on a
7 combination of qualifications and price and not based on price alone and a
8 requirement that each person or firm must submit a description of the
9 procedures it proposes to use to implement the purchasing agency's
10 subcontractor selection plan.

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

16 3. The director or head of the purchasing agency shall initiate an
17 appropriately qualified selection committee for each request for
18 qualifications. The director or head of the purchasing agency shall
19 ensure that the selection committee members are competent to serve on the
20 selection committee. Each selection committee must include one employee
21 of the purchasing agency or a purchasing agency representative appointed
22 by the purchasing agency. The same selection committee shall function as
23 to all of the multiple contracts included in the procurement. If the
24 purchasing agency is procuring multiple contracts for professional
25 services, the purchasing agency shall determine the number and
26 qualifications of the selection committee members. A selection committee
27 for the procurement of multiple contracts for job-order-contracting
28 construction services shall have not more than seven members and shall
29 include at least one person who is a senior management employee of a
30 licensed contractor and one person who is an architect or engineer
31 registered pursuant to section 32-121. These members may be employees of
32 the purchasing agency or outside consultants. Outside contractors,
33 architects and engineers serving on a selection committee are not entitled
34 to receive compensation from the purchasing agency for performing this
35 service, but the purchasing agency may elect to reimburse outside
36 contractors, architects and engineers for travel, lodging and other
37 expenses incurred in connection with service on a selection committee. A
38 person who is a member of a selection committee shall not be a contractor
39 under a contract awarded under the procurement or provide any professional
40 services, construction, construction services, materials or other services
41 under the contract. The selection committee and the purchasing agency
42 shall do the following:

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

44 (i) The selection committee shall determine the persons or firms to
45 be interviewed by evaluating the statements of qualifications and

1 performance data that are submitted in response to the purchasing agency's
2 request for qualifications based only on the selection criteria and
3 relative weight of the selection criteria stated in the request for
4 qualifications to be used to determine the persons or firms to be
5 interviewed.

6 (ii) If the selection criteria and relative weight of the selection
7 criteria to be used by the selection committee to select the persons or
8 firms on a final list and to determine their order on a final list are not
9 included in the request for qualifications, before the interviews are held
10 the purchasing agency shall distribute to the persons or firms to be
11 interviewed the selection criteria and relative weight of the selection
12 criteria to be used to select the persons or firms on each final list and
13 to determine their order on each final list. These selection criteria and
14 relative weight may be different than the selection criteria and relative
15 weight used to determine the persons or firms to be interviewed.

16 (iii) The selection committee shall conduct interviews with the
17 number of persons or firms to be interviewed as stated in the request for
18 qualifications regarding the professional services or
19 job-order-contracting construction services and the relative methods of
20 approach for furnishing the required professional services or
21 job-order-contracting construction services.

22 (b) Based only on the selection criteria and relative weight of the
23 selection criteria specified as provided in this subsection for selection
24 of the persons or firms on each final list and their order on each final
25 list, the selection committee shall select the persons or firms for each
26 final list and in the case of a final list or final lists for multiple
27 contracts that will be negotiated under subsection E of this section, rank
28 the persons or firms on each final list in order of preference. If the
29 procurement is for multiple contracts for different professional services
30 to be awarded to separate persons or firms, there is a separate final list
31 for each type of professional services, and if a person or firm submitted
32 qualifications for more than one type of professional services, the person
33 or firm may be on more than one final list.

34 (c) If the contract will be awarded under subsection E of this
35 section, before or at the same time as the purchasing agency notifies the
36 persons or firms on each final list that they are on that final list, the
37 purchasing agency shall send actual notice to the following persons or
38 firms that they are not on that final list:

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

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

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

1 purchasing agency shall send actual notice to each of the following
2 persons or firms that they are not on the final list or that other persons
3 or firms are on the final 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. The purchasing agency shall award multiple contracts specified
9 in the request for qualifications as provided in subsection E or F of this
10 section.

11 E. The procurement officer shall conduct negotiations with persons
12 or firms on the final list or final lists. The negotiations shall include
13 consideration of compensation and other contract terms that the
14 procurement officer determines to be fair and reasonable to this state.
15 In making this decision, the procurement officer shall take into account
16 the estimated value, the scope, the complexity and the nature of the
17 professional services or job-order-contracting construction services to be
18 rendered. If in a procurement under this section the procurement officer
19 terminates negotiations with a person or firm on a final list and
20 commences negotiations with another person or firm on that final list, the
21 procurement officer shall not in that procurement recommence negotiations
22 or enter into a contract for the job-order-contracting construction
23 services or professional services covered by that final list with any
24 person or firm on that final list with whom the procurement officer has
25 terminated negotiations. If the procurement is for:

26 1. Multiple contracts for professional services to be awarded to a
27 single person or firm, there is one final list and the procurement officer
28 shall enter into negotiations with the highest qualified person or firm on
29 the final list. If the procurement officer is not able to negotiate a
30 satisfactory contract with the highest qualified person or firm on the
31 final list, at compensation and on other contract terms the procurement
32 officer determines to be fair and reasonable, the procurement officer
33 shall then undertake negotiations with the next most qualified person or
34 firm on the final list in sequence until an agreement is reached or a
35 determination is made to reject all persons or firms on the final list.

36 2. Multiple contracts for similar job-order-contracting
37 construction services to be awarded to separate persons or firms or for
38 multiple contracts for similar professional services to be awarded to
39 separate persons or firms, there is one final list and the procurement
40 officer shall enter into separate negotiations for contracts with the
41 number of the highest qualified persons or firms on the final list equal
42 to the number of contracts to be awarded. If the procurement officer is
43 not able to negotiate a satisfactory contract with a person or firm with
44 whom the procurement officer has commenced negotiations, the procurement
45 officer shall formally terminate negotiations with that person or

1 firm. The procurement officer shall then undertake negotiations for a
2 contract with the next most qualified person or firm on the final list
3 with whom the procurement officer is not then negotiating and with whom
4 the procurement officer has not previously negotiated in sequence until an
5 agreement is reached for some or all of the multiple contracts included in
6 the request for qualifications or a determination is made to reject all
7 persons or firms on the final list.

8 3. Multiple contracts for different professional services to be
9 awarded to separate persons or firms, there is a separate final list for
10 each type of professional services and the procurement officer shall enter
11 into separate negotiations for contracts with the number of the highest
12 qualified persons or firms on the final list equal to the number of
13 contracts to be awarded. If the procurement officer is not able to
14 negotiate a satisfactory contract with a person or firm with whom the
15 procurement officer has commenced negotiations, the procurement officer
16 shall formally terminate negotiations with that person or firm. The
17 procurement officer shall then undertake negotiations for a contract with
18 the next most qualified person or firm on the final list with whom the
19 procurement officer is not then negotiating and with whom the procurement
20 officer has not previously negotiated in sequence until an agreement is
21 reached for some or all of the multiple contracts included in the request
22 for qualifications or a determination is made to reject all persons or
23 firms on the final list.

24 F. As an alternative to subsection E of this section, the
25 purchasing agency may award multiple contracts for similar
26 job-order-contracting construction services to be awarded to separate
27 persons or firms as follows:

28 1. The purchasing agency shall use the selection committee
29 appointed for the request for qualifications pursuant to subsection C of
30 this section.

31 2. The purchasing agency shall issue a request for proposals to the
32 persons or firms on the final list developed pursuant to subsection C of
33 this section.

34 3. The request for proposals shall include:

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

38 (b) A statement that the multiple contracts will be awarded to a
39 specified number of offerors whose proposals receive the highest number of
40 points under a scoring method. The specified number of offerors will be
41 the number of contracts included in the procurement.

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

45 (i) Offeror qualifications.

- 1 (ii) Offeror financial capacity.
2 (iii) Compliance with the purchasing agency's project schedule.
3 (iv) The price or life cycle price for procurements that include
4 maintenance services, operations services or finance services.
5 (v) An offeror quality management plan.
6 (vi) Other evaluation factors that demonstrate competence and
7 qualifications for the job-order-contracting construction services in the
8 request for proposals as determined by the purchasing agency, if any.
9 (d) A requirement that each offeror submit separately a technical
10 proposal and a price proposal and that the offeror's entire proposal be
11 responsive to the requirements in the request for proposals.
12 (e) A statement that in applying the scoring method the selection
13 committee will separately evaluate the technical proposal and the price
14 proposal and will evaluate and score the technical proposal before opening
15 the price proposal.
16 (f) If the purchasing agency conducts discussions pursuant to
17 paragraph 5 of this subsection, a statement that discussions will be held
18 and a requirement that each offeror submit a preliminary technical
19 proposal before the discussions are held.
20 4. If the purchasing agency determines to conduct discussions
21 pursuant to paragraph 5 of this subsection, each offeror shall submit a
22 preliminary technical proposal to the purchasing agency before those
23 discussions are held.
24 5. If determined by the purchasing agency and included by the
25 purchasing agency in the request for proposals, the selection committee
26 shall conduct discussions with all offerors that submit preliminary
27 technical proposals. Discussions shall be for the purpose of
28 clarification to ensure full understanding of, and responsiveness to, the
29 solicitation requirements. Offerors shall be accorded fair treatment with
30 respect to any opportunity for discussion and for clarification by the
31 purchasing agency. Revision of preliminary technical proposals shall be
32 ~~permitted~~ ALLOWED after submission of preliminary technical proposals and
33 before award for the purpose of obtaining best and final proposals. In
34 conducting any discussions, information derived from proposals submitted
35 by competing offerors shall not be disclosed to other competing offerors.
36 6. After completion of any discussions pursuant to paragraph 5 of
37 this subsection or if no discussions are held, each offeror shall
38 separately submit the offeror's final technical proposal and its price
39 proposal.
40 7. Before opening any price proposal, the selection committee shall
41 open the final technical proposals, evaluate the final technical proposals
42 and score the final technical proposals using the scoring method in the
43 request for proposals. No other factors or criteria may be used in the
44 evaluation and scoring.

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

7 9. The purchasing agency shall award the multiple contracts to the
8 responsive and responsible offerors whose proposals receive the highest
9 scores under the method of scoring in the request for proposals. No other
10 factors or criteria may be used in the evaluation. Before or at the same
11 time as the purchasing agency notifies the winning offerors that they have
12 won, the purchasing agency shall give actual notice to each other offeror
13 either that the offeror has not won or that other offerors have won.

14 10. The contracts file shall contain the basis on which the award is
15 made, including at a minimum the information and documents required under
16 subsection G of this section.

17 G. If the procurement has multiple final lists under subsection C
18 of this section or multiple requests for proposals under subsection F of
19 this section, the purchasing agency shall retain the items in paragraphs 1
20 and 2 of this subsection, as applicable, for each final list and each
21 request for proposals procurement process. At a minimum, the purchasing
22 agency shall retain the following for each procurement under this section:

23 1. As to each final list under each request for qualifications
24 procurement process under subsection C of this section:

25 (a) If interviews were not held:

26 (i) The submittal of the person or firm listed first on the final
27 list and all submittals of each person or firm with which the purchasing
28 agency enters into a contract.

29 (ii) The final list.

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

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

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

44 (b) If interviews were held:

1 (i) All submittals of the person or firm listed first on the final
2 list and all submittals of each person or firm with which the purchasing
3 agency enters into a contract.

4 (ii) The final list.

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

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

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

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

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

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

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

37 (a) The entire proposal submitted by the person or firm that
38 received the highest score in the scoring method in the request for
39 proposals and the entire proposal submitted by each person or firm with
40 which the purchasing agency enters into a contract.

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

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

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

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

11 1. Notwithstanding title 39, chapter 1, article 2, until contract
12 award by a purchasing agency of all of the multiple contracts in the
13 procurement or termination of the procurement by the purchasing agency,
14 only the name of each person or firm on the final list developed pursuant
15 to subsection C of this section may be made available to the public and
16 all other information received by the purchasing agency in response to the
17 request for qualifications under subsection C of this section or contained
18 in proposals submitted under subsection F of this section shall be
19 confidential in order to avoid disclosure of the contents that may be
20 prejudicial to competing submitters and offerors during the selection
21 process.

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

31 3. The proposals submitted under subsection F of this section shall
32 not be made available to the public until after the purchasing agency has
33 entered into a contract for all of the multiple contracts in the
34 procurement or the purchasing agency has terminated the procurement. At a
35 minimum the proposals submitted under subsection F of this section that
36 the purchasing agency is required to retain under subsection G of this
37 section shall be made available to the public after the purchasing agency
38 has entered into a contract for all of the contracts in the procurement or
39 the purchasing agency has terminated the procurement.

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

43 5. The document or documents prescribed in subsection G, paragraph
44 1, subdivision (a), item (v) and subdivision (b), items (v) and (viii) and

1 paragraph 2, subdivision (d) of this section are available to the extent
2 provided in title 39, chapter 1, article 2.

3 I. The purchasing agency may cancel a request for qualifications or
4 a request for proposals, reject in whole or in part any or all submittals
5 or proposals or determine not to enter into one or more of the multiple
6 contracts as specified in the solicitation if the purchasing agency
7 determines in its absolute and sole discretion that the action is in the
8 best interest of this state. The purchasing agency shall make the reasons
9 for cancellation, rejection or determination not to enter into contracts
10 part of the contract file.

11 J. If the purchasing agency does not have a procurement protest
12 policy and procedures that have been formally adopted and published by the
13 purchasing agency, for protests relating to procurements under this
14 section the purchasing agency shall follow the procurement protest policy
15 and procedures of the department. The purchasing agency shall process all
16 protests relating to procurements under this section.

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

APPROVED BY THE GOVERNOR MAY 5, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 5, 2021.