

PROPOSED
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1250
(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 34-101, Arizona Revised Statutes, is amended to
3 read:

4 34-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Agent":

7 (a) Means any county, city or town, or officer, board or commission
8 of any county, city or town, and irrigation, power, electrical, drainage,
9 flood protection and flood control districts, tax levying public
10 improvement districts and county or city improvement districts.

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

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

19 3. "Construction":

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

23 (b) Does not include the routine operation, routine repair or
24 routine maintenance of existing facilities, structures, buildings or real
25 property.

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

28 (a) There is a separate contract for design services and a separate
29 contract for construction services, except that instead of a single
30 contract for construction services, the agent may elect separate contracts
31 for preconstruction services during the design phase, for construction
32 during the construction phase and for any other construction services.

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

35 (c) Design and construction of the project may be either:

36 (i) Sequential with the entire design complete before construction
37 commences.

1 (ii) Concurrent with the design produced in two or more phases and
2 construction of some phases commencing before the entire design is
3 complete.

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

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

9 (a) Construction, excluding services, through the
10 construction-manager-at-risk or job-order-contracting project delivery
11 methods.

12 (b) A combination of construction and, as elected by the agent, one
13 or more related services, such as finance services, maintenance services,
14 operations services, design services and preconstruction services, as
15 those services are authorized in the definitions of
16 construction-manager-at-risk, design-build or job-order-contracting in
17 this section.

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

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

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

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

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

25 (c) The second contract is for construction.

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

28 (e) Finance services, maintenance services and operations services
29 are not included.

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

31 (a) There is a single contract for design services and construction
32 services, except that instead of a single contract for design services and
33 construction services, the agent may elect separate contracts for
34 preconstruction services and design services during the design phase, for
35 construction and design services during the construction phase and for any
36 other construction services.

37 (b) Design and construction of the project may be either:

38 (i) Sequential with the entire design complete before construction
39 commences.

40 (ii) Concurrent with the design produced in two or more phases and
41 construction of some phases commencing before the entire design is
42 complete.

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

45 10. "Design professional" means an individual or firm that is
46 registered by the state board of technical registration pursuant to title
47 32, chapter 1 to practice architecture, engineering, geology, landscape

1 architecture or land surveying or any combination of those professions and
2 persons employed by the registered individual or firm.

3 11. "Design requirements":

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

6 (i) The required features, functions, characteristics, qualities
7 and properties.

8 (ii) The anticipated schedule, including start, duration and
9 completion.

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

13 (b) May include:

14 (i) Drawings and other documents illustrating the scale and
15 relationship of the features, functions and characteristics of the
16 project, which shall all be prepared by a design professional who is
17 registered pursuant to section 32-121.

18 (ii) Additional design information or documents that the agent
19 elects to include.

20 12. "Design services" means architect services, engineer services
21 or landscape architect services.

22 13. "Direct selection" means the selection of a technical
23 registrant without the requirement of advertising or the use of a current
24 register.

25 14. "Engineer services" means those professional engineer services
26 that are within the scope of engineering practice as provided in title 32,
27 chapter 1.

28 15. "Finance services" means financing for a construction services
29 project.

30 16. "Horizontal construction" means construction of highways,
31 roads, streets, PIPELINES, bridges, canals, floodways, earthen dams,
32 landfills, light rail and airport runways, taxiways and aprons. For the
33 purposes of this paragraph: ~~—~~

34 (a) Light rail does not include any related rail stations,
35 maintenance facilities or parking facilities.

36 (b) PIPELINES DO NOT INCLUDE MUNICIPALLY OWNED NATURAL GAS
37 PIPELINES, REGULATOR STATIONS FOR GAS PIPELINES, GATE STATIONS FOR GAS
38 PIPELINES OR METER ASSEMBLIES FOR GAS PIPELINES.

39 17. "Job-order-contracting" means a project delivery method in
40 which:

41 (a) The contract is a requirements contract for indefinite
42 quantities of construction.

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

45 (c) Finance services, maintenance services, operations services,
46 preconstruction services, design services and other related services may
47 be included.

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

4 19. "Maintenance services" means routine maintenance, repair and
5 replacement of existing facilities, structures, buildings or real
6 property.

7 20. "Materials":

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

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

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

14 22. "Person" means any corporation, business, individual, union,
15 committee, club, other organization or group of individuals.

16 23. "Preconstruction services" means services and other activities
17 during the design phase.

18 24. "Procurement":

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

21 (b) Includes all functions that pertain to obtaining any materials,
22 services, construction or construction services, including description of
23 requirements, selection and solicitation of sources, preparation and award
24 of contract and all phases of contract administration.

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

28 26. "Services":

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

32 (b) Does not include employment agreements or collective bargaining
33 agreements.

34 27. "Subcontractor" means a person who contracts to perform work or
35 render service to a contractor or to another subcontractor as a part of a
36 contract with an agent.

37 28. "Technical registrant" means a person who provides any of the
38 professional services listed in title 32, chapter 1.

39 Sec. 2. Section 34-103, Arizona Revised Statutes, is amended to
40 read:

41 34-103. Employment of technical registrants for work on
42 public buildings and structures; direct selection;
43 final list selection; public competition

44 A. An agent shall procure professional services from a technical
45 registrant in the manner prescribed in chapter 6 of this title if the
46 contract is for an amount of more than ~~five hundred thousand dollars~~ THE
47 ADJUSTED AMOUNT PURSUANT TO SUBSECTION B OF THIS SECTION.

1 B. An agent may procure professional services from a technical
2 registrant in the manner prescribed in chapter 6 of this title or as
3 prescribed in subsection D of this section if the contract is for an
4 amount of ~~five hundred thousand dollars~~ \$1,000,000 or less AND SHALL BE
5 ADJUSTED BY THE ANNUAL PERCENTAGE CHANGE IN THE GDP PRICE DEFLATOR AS
6 DEFINED IN SECTION 41-563.

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

12 D. An agent may employ a technical registrant by direct selection,
13 by public competition pursuant to subsection G of this section or pursuant
14 to subsections E and F of this section if the contract is for an amount of
15 five hundred thousand dollars or less.

16 E. The agent may elect to employ a technical registrant or
17 technical registrants by encouraging persons or firms engaged in the
18 lawful practice of the profession to submit annually a statement of
19 qualifications and experience. If the agent elects to employ a technical
20 registrant or technical registrants by this method, the agent shall
21 initiate an appropriately qualified selection committee for each
22 procurement, which may include one contract or multiple contracts, in
23 accordance with rules adopted by the agent. The amount of each contract
24 in a single procurement under this subsection and subsection F of this
25 section shall not exceed the dollar amount limits in subsections B and D
26 of this section. The selection committee shall evaluate current
27 statements of qualifications and experience on file with the agent
28 together with those that may be submitted by other persons or firms
29 regarding the procurement. If possible and practicable, the selection
30 committee shall conduct interviews regarding the procurement and the
31 relative methods of furnishing the required services and, if possible,
32 shall select, in order of preference and based on criteria established and
33 published by the selection committee, one or more final lists of the
34 persons or firms deemed to be the most qualified to provide the services
35 required. The selection committee shall base the selection of each final
36 list and the order of preference on each final list on demonstrated
37 competence and qualifications only. The agent and the selection committee
38 shall not request or consider fees, price, man-hours or any other cost
39 information at any point in the selection process under this subsection,
40 including the selection of the persons or firms to be interviewed, the
41 selection of the persons and firms to be on a final list, in determining
42 the order of preference of persons and firms on a final list or for any
43 other purpose in the selection process. If the procurement is for:

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

1 2. Multiple contracts for different technical registrant services
2 to be awarded to separate persons or firms, there shall be a separate
3 final list for each type of technical registrant services and the number
4 of persons or firms on each final list shall be the number of contracts
5 for each type of technical registrant service plus another number that is
6 determined by the agent and that is not more than five.

7 3. Multiple contracts for similar technical registrant services to
8 be awarded to separate persons or firms, there shall be one final list and
9 the number of persons or firms on the final list shall be the number of
10 contracts plus another number that is determined by the agent and that is
11 not more than five.

12 F. After each final list is selected pursuant to subsection E of
13 this section, the agent shall enter into negotiations with the highest
14 qualified person or firm on each final list or, in the case of a final
15 list for multiple contracts to be awarded to separate persons or firms,
16 the agent shall enter into negotiations with a number of the highest
17 qualified persons or firms on a final list equal to the number of
18 contracts that may or will be awarded. The negotiations shall include
19 consideration of compensation and other contract terms that the agent
20 determines to be fair and reasonable to the agent. In making this
21 determination, the agent shall take into account the estimated value, the
22 scope, the complexity and the nature of the professional services to be
23 rendered. If the agent is not able to negotiate a satisfactory contract
24 with a person or firm with which the agent is negotiating at a price and
25 on other contract terms the agent determines to be fair and reasonable,
26 the agent shall formally terminate negotiations with that person or firm.
27 The agent may enter into negotiations with the next most qualified person
28 or firm on the final list in sequence until an agreement is reached or a
29 determination is made to reject all persons or firms on the final list.
30 If the agent terminates negotiations with a person or firm on a final list
31 and commences negotiations with another person or firm on a final list,
32 the agent shall not in that procurement recommence negotiations or enter
33 into the single contract or multiple contracts for the technical
34 registrant services covered by that final list with any person or firm on
35 that final list with whom the agent has terminated negotiations.

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

- 39 1. The project title and description.
- 40 2. The design and construction budget.
- 41 3. The competitive process and criteria to be used to select the
42 winning offeror.
- 43 4. The amount of the stipend to be paid to the unsuccessful
44 offerors.
- 45 5. The offerors' response date.
- 46 6. The person to contact to obtain additional information regarding
47 the competition.
- 48 7. Any other requirements established by the agent as appropriate.

1 Sec. 3. Section 34-603, Arizona Revised Statutes, is amended to
2 read:

3 34-603. Procurement of professional services and
4 construction-manager-at-risk, design-build and
5 job-order-contracting construction services;
6 definition

7 A. Except for services that are under a single contract and that an
8 agent procures pursuant to section 34-103 or 34-606, an agent shall
9 procure a single contract for the following services pursuant to this
10 section:

- 11 1. Architect services.
- 12 2. Construction-manager-at-risk construction services.
- 13 3. Design-build construction services.
- 14 4. Engineer services.
- 15 5. Job-order-contracting construction services.
- 16 6. Landscape architect services.
- 17 7. Assayer services.
- 18 8. Geologist services.
- 19 9. Land surveying services.
- 20 10. PROGRAM MANAGEMENT SERVICES.
- 21 11. PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES.
- 22 12. LAND AND RIGHT-OF-WAY ACQUISITION SERVICES.

23 B. An agent shall provide notice of each procurement of
24 professional services or construction services specified in this section
25 and shall award the single contract on the basis of demonstrated
26 competence and qualifications for the type of professional services or
27 construction services pursuant to the procedures prescribed in this
28 section.

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

31 1. The following requirements apply:

32 (a) The agent and the selection committee shall not request or
33 consider fees, price, man-hours or any other cost information at any point
34 in the selection process under this subsection or under subsection D of
35 this section, including the selection of persons or firms to be
36 interviewed, the selection of persons or firms to be on the final list, in
37 determining the order of preference of persons or firms on the final list
38 or for any other purpose in the selection process.

39 (b) In determining the persons or firms to participate in any
40 interviews and in determining the persons and firms to be on the final
41 list and their order on the final list, the selection committee shall use
42 and shall consider only the criteria and weighting of criteria specified
43 by the agent for that purpose as provided in this subsection. No other
44 factors or criteria may be used in the evaluation, determinations and
45 other actions.

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

1 (i) For construction-manager-at-risk construction services, an
2 agent may elect separate contracts for preconstruction services during the
3 design phase, for construction during the construction phase and for any
4 other construction services.

5 (ii) For design-build construction services, an agent may elect
6 separate contracts for preconstruction services and design services during
7 the design phase, for construction and design services during the
8 construction phase and for any other construction services.

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

11 (d) All construction-manager-at-risk construction services or
12 design-build construction services included in a procurement under
13 this section shall be limited to construction services to be performed at
14 a single location, a common location or, if the construction services are
15 all for a similar purpose, multiple locations. For
16 construction-manager-at-risk construction services and design-build
17 construction services to be performed at multiple locations:

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

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

24 (e) If the agent enters into the first contract for preconstruction
25 services, construction services or professional services as the result of
26 the procurement, the procurement under this section ends. After execution
27 of that first contract the agent may not use the procurement or the
28 existing final list in the procurement as the basis for entering into a
29 contract with any other person or firm that participated in the
30 procurement.

31 (f) Notwithstanding any other provision of this section specifying
32 the number of persons or firms to be interviewed, the number of persons or
33 firms to be on a final list or any other numerical specification in this
34 section:

35 (i) If a smaller number of persons or firms respond to the request
36 for qualifications or if one or more persons or firms drop out of the
37 procurement so that there is a smaller number of persons or firms
38 participating in the procurement, the agent may elect to proceed with the
39 procurement with the participating persons or firms if there are at least
40 two participating responsive and responsible persons or firms.
41 Alternatively, the agent may elect to terminate the procurement.

42 (ii) As to a request for qualifications for professional services
43 or construction services to be negotiated pursuant to subsection E of this
44 section only, if only one responsive and responsible person or firm
45 responds to the request for qualifications or, if one or more persons or
46 firms drop out of the procurement so that only one responsive and
47 responsible person or firm remains in the procurement, the agent may elect
48 to proceed with the procurement with only one person or firm if the agent

1 determines in writing that the fee negotiated pursuant to subsection E of
2 this section is fair and reasonable and that either other prospective
3 persons or firms had reasonable opportunity to respond or there is not
4 adequate time for a resolicitation.

5 (iii) If a person or firm on the final list withdraws or is removed
6 from the procurement and the selection committee determines that it is in
7 the best interest of the agent, the selection committee may replace that
8 person or firm on the final list with another person or firm that
9 submitted qualifications in the procurement and that is selected by the
10 selection committee as the next most qualified.

11 2. An agent shall issue a request for qualifications for each
12 procurement and publish notice of the request for qualifications. This
13 notice shall be published by advertising in a newspaper of general
14 circulation in the county in which the agent is located for two
15 consecutive publications if it is a weekly newspaper or for two
16 publications that are at least six but no more than ten days apart if it
17 is a daily newspaper. The request for qualifications shall:

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

21 (b) In a procurement of a contract to be negotiated under
22 subsection E of this section, state that there will be a single final list
23 of at least three and not more than five persons or firms. In a
24 procurement in which the contract will be awarded under subsection F of
25 this section, the request for qualifications shall state that there will
26 be a single final list and that the number of persons or firms on the
27 final list will be three.

28 (c) As prescribed below, state the selection criteria and relative
29 weight of the selection criteria to be used by the selection committee,
30 except that for construction services one of the criteria shall be the
31 person's or firm's subcontractor selection plan or procedures to implement
32 the agent's subcontractor selection plan. All selection criteria under
33 this subsection shall be factors that demonstrate competence and
34 qualifications for the type of professional services or construction
35 services included in the procurement. If:

36 (i) Interviews will be held, the request for qualifications shall
37 state the selection criteria and relative weight of the selection criteria
38 to be used in selecting the persons or firms to be interviewed and the
39 request for qualifications may state the selection criteria and relative
40 weight of the selection criteria to be used in selecting the persons or
41 firms on the final list and in determining their order on the final list.
42 The final list selection criteria and relative weights may be different
43 than the selection criteria and relative weights used to determine the
44 persons or firms to be interviewed. The request for qualifications shall
45 also state whether the agent will select the persons or firms on the final
46 list and their order on the final list solely through the results of the
47 interview process or through the combined results of both the interview

1 process and the evaluation of statements of qualifications and performance
2 data submitted in response to the agent's request for qualifications.

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

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

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

11 (i) A requirement that each person or firm submit a proposed
12 subcontractor selection plan and a requirement that the proposed
13 subcontractor selection plan must select subcontractors based on
14 qualifications alone or on a combination of qualifications and price and
15 shall not select subcontractors based on price alone.

16 (ii) A subcontractor selection plan adopted by the agent that
17 applies to the person or firm that is selected to perform the construction
18 services and that requires subcontractors to be selected based on
19 qualifications alone or on a combination of qualifications and price and
20 not based on price alone and a requirement that each person or firm must
21 submit a description of the procedures it proposes to use to implement the
22 agent's subcontractor selection plan.

23 (f) Include a description of the publicly available location of the
24 agent's protest policy and procedures or, if the agent does not have a
25 protest policy and procedures, a statement that the protest policy and
26 procedures referred to in subsection ~~J~~ K of this section apply to any
27 protests in connection with the procurement.

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

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

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

35 (iii) A schedule for the construction services to be performed at
36 each location that shows the agent's intent to commence all construction
37 at each location within thirty months after execution of the first
38 contract for preconstruction services or other construction services at
39 any of the locations.

40 3. An agent shall initiate an appropriately qualified selection
41 committee for each request for qualifications. The agent shall ensure
42 that the selection committee members are competent to serve on the
43 selection committee. Each selection committee must include one employee
44 of the agent or an agent representative who is appointed by the agent. If
45 the agent is procuring professional services, the agent shall determine
46 the number and qualifications of the selection committee members. A
47 selection committee for the procurement of construction services shall not
48 have more than seven members, except that, if the contract involves the

1 agent and additional governmental or private participants, the number of
2 members of the selection committee shall be increased by one for each
3 additional participant, except that the maximum number of members of the
4 selection committee is nine. The selection committee for construction
5 services shall include at least one person who is a senior management
6 employee of a licensed contractor and one person who is an architect or an
7 engineer who is registered pursuant to section 32-121. These members may
8 be employees of the agent or outside consultants. Outside contractors,
9 architects and engineers serving on a selection committee shall not
10 receive compensation from the agent for performing this service, but the
11 agent may elect to reimburse outside contractors, architects and engineers
12 for travel, lodging and other expenses incurred in connection with service
13 on a selection committee. A person who is a member of a selection
14 committee shall not be a contractor under a contract awarded under the
15 procurement or provide any professional services, construction,
16 construction services, materials or other services under the contract.
17 The selection committee and the agent shall do the following:

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

19 (i) The selection committee shall determine the persons or firms to
20 be interviewed by evaluating the statements of qualifications and
21 performance data that are submitted in response to the agent's request for
22 qualifications based only on the selection criteria and relative weight of
23 the selection criteria stated in the request for qualifications to be used
24 to determine the persons or firms to be interviewed.

25 (ii) If the selection criteria and relative weight of the selection
26 criteria to be used by the selection committee to select the persons or
27 firms on the final list and to determine their order on the final list are
28 not included in the request for qualifications, before the interviews are
29 held the agent shall distribute to the persons or firms to be interviewed
30 the selection criteria and relative weight of the selection criteria to be
31 used to select the persons or firms on the final list and to determine
32 their order on the final list. These selection criteria and relative
33 weight may be different than the selection criteria and relative weight
34 used to determine the persons or firms to be interviewed.

35 (iii) The selection committee shall conduct interviews with the
36 number of persons or firms to be interviewed as stated in the request for
37 qualifications regarding the professional services or construction
38 services and the relative methods of approach for furnishing the required
39 professional services or construction services.

40 (b) Based only on the selection criteria and relative weight of the
41 selection criteria specified as provided in this subsection for selection
42 of the persons or firms on the final list and their order on the final
43 list, the selection committee shall select the persons or firms for the
44 final list and, in the case of a final list for a contract that will be
45 negotiated under subsection E of this section, rank the persons or firms
46 on the final list in order of preference.

47 (c) If the contract will be negotiated under subsection E of this
48 section, before or at the same time as the agent notifies the highest

1 ranking person or firm on the final list that it is the highest ranking
2 person or firm, the agent shall send actual notice to each of the
3 following that it is not the highest person or firm on the final list or
4 that another person or firm is the highest ranking person or firm on the
5 final list:

6 (i) If interviews were held, the other persons and firms
7 interviewed.

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

10 (d) If the contract will be awarded under subsection F of this
11 section, before or at the same time as the agent notifies the persons or
12 firms on the final list that they are on the final list, the agent shall
13 send actual notice to each of the following persons or firms that they are
14 not on the final list or that other persons or firms are on the final
15 list:

16 (i) If interviews were held, the other persons or firms
17 interviewed.

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

20 D. An agent shall award the single contract under the procurement
21 as provided in subsection E, ~~or~~ F OR G of this section.

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

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

26 2. The negotiations shall include consideration of compensation and
27 other contract terms that the agent determines to be fair and reasonable
28 to the agent. In making this decision, the agent shall take into account
29 the estimated value, the scope, the complexity and the nature of the
30 professional services or construction services to be rendered.

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

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

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

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

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

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

9 3. The request for proposals shall include:

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

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

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

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

21 (ii) Offeror qualifications.

22 (iii) Offeror financial capacity.

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

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

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

36 (vii) An offeror quality management plan.

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

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

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

47 (f) A statement that in applying the scoring method the selection
48 committee will separately evaluate the technical proposal and the price

1 proposal and will evaluate and score the technical proposal before opening
2 the price proposal.

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

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

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

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

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

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

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

43 10. The contract or contracts file shall contain the basis on which
44 the award is made, including at a minimum the information and documents
45 required under subsection ~~G~~ H of this section.

46 11. For design-build construction services only, the agent shall
47 award a stipulated fee equal to a percentage, as prescribed in the request
48 for proposals, of the agent's project final budget for design and

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

20 G. AS AN ALTERNATIVE TO SUBSECTIONS E AND F OF THIS SECTION, AN
21 AGENT MAY AWARD A SINGLE CONTRACT FOR JOB-ORDER-CONTRACTING CONSTRUCTION
22 SERVICES BY USING A COOPERATIVE PURCHASING AGREEMENT TO PROCURE A CONTRACT
23 FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IF THE COOPERATIVE
24 AGREEMENT COMPLIES WITH ALL OF THE FOLLOWING:

25 1. THE PUBLIC PROCUREMENT UNIT CONDUCTING OR ADMINISTERING THE
26 COOPERATIVE PURCHASING AGREEMENT TO PROCURE JOB-ORDER-CONTRACTING
27 CONSTRUCTION SERVICES COMPLIES WITH THE REQUIREMENTS OF SUBSECTION E OR F
28 OF THIS SECTION AND SECTION 41-2632.

29 2. THE AGENT ENTERS INTO THE JOB-ORDER-CONTRACTING CONSTRUCTION
30 SERVICES CONTRACT FOR A SINGLE PROJECT.

31 3. THE SINGLE PROJECT SCOPE OF WORK IS CONSISTENT WITH THE SCOPE OF
32 WORK DESCRIBED IN THE COOPERATIVE AGREEMENT.

33 4. THE SINGLE PROJECT VALUE DOES NOT EXCEED THE MAXIMUM JOB ORDER
34 VALUE ESTABLISHED BY THE COOPERATIVE AGREEMENT.

35 ~~G.~~ H. At a minimum, the agent shall retain the following for each
36 procurement under this section:

37 1. For each request for qualifications procurement process under
38 subsection C or ~~subsection K, paragraph 2~~ L of this section:

39 (a) If interviews were not held:

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

43 (ii) The final list.

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

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

4 (v) A document or documents that show the final score or rank on
5 each selection criterion of each person or firm that submitted
6 qualifications and that support the final overall rankings and scores of
7 the persons or firms that submitted qualifications. At the election of
8 the agent, this documentation may be in the form of a consolidated scoring
9 sheet for the entire selection committee, in the form of individual
10 scoring sheets for individual selection committee members or any other
11 form as determined by the agent.

12 (b) If interviews were held:

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

16 (ii) The final list.

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

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

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

31 (vi) A list of the selection criteria and relative weight of the
32 selection criteria used to select the persons or firms for the short list
33 to be interviewed.

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

38 (viii) A document or documents that show the final score or rank on
39 each selection criterion of each person or firm that submitted
40 qualifications and that support the final overall rankings and scores of
41 the persons or firms that submitted qualifications in the selection of the
42 persons or firms to be on the short list to be interviewed. At the
43 election of the agent, this documentation may be in the form of a
44 consolidated scoring sheet for the entire selection committee, in the form
45 of individual scoring sheets for the individual selection committee
46 members or any other form as determined by the agent.

47 2. For each request for proposals procurement process under
48 subsection F or ~~subsection K, paragraph 3~~ L of this section:

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

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

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

10 (d) A document or documents that show the final score on each
11 factor in the scoring method in the request for proposals of each offeror
12 that submitted a proposal and that support the final overall scores of the
13 offerors that submitted proposals. At the election of the agent, this
14 documentation may be in the form of a consolidated scoring sheet for the
15 entire selection committee, in the form of individual scoring sheets for
16 individual selection committee members or in any other form as determined
17 by the agent.

18 ~~H.~~ I. Information relating to each procurement under this section
19 shall be made available to the public as follows:

20 1. Notwithstanding title 39, chapter 1, article 2, until the agent
21 awards a contract or terminates the procurement, only the name of each
22 person or firm on the final list developed pursuant to subsection C ~~or~~
23 ~~subsection K, paragraph 2~~ of this section may be made available to the
24 public. All other information received by the agent in response to the
25 request for qualifications pursuant to subsection C ~~or subsection K,~~
26 ~~paragraph 2~~ of this section or contained in proposals submitted pursuant
27 to subsection F ~~or subsection K, paragraph 3~~ of this section shall be
28 confidential in order to avoid disclosure of the contents that may be
29 prejudicial to competing submitters and offerors during the selection
30 process.

31 2. After the agent awards the contract or terminates the
32 procurement, the agent shall make available to the public pursuant to
33 title 39, chapter 1, article 2 at a minimum all of the items that the
34 agent is required to retain under subsection ~~G~~ H of this section, except
35 the proposals submitted in response to a request for proposals under
36 subsection F or ~~subsection K, paragraph 3~~ L of this section and the
37 document or documents prescribed in subsection ~~G~~ H, paragraph 1,
38 subdivision (a), item (v) and subdivision (b), items (v) and (viii) and
39 paragraph 2, subdivision (d) of this section.

40 3. The proposals submitted under subsection F or ~~subsection K,~~
41 ~~paragraph 3~~ L of this section shall not be made available to the public
42 until after the agent has entered into a contract or terminated the
43 procurement. At a minimum the proposals submitted under subsection F or
44 ~~subsection K, paragraph 3~~ L of this section that the agent is required to
45 retain under subsection ~~G~~ H of this section shall be made available to
46 the public after the agent has entered into a contract or terminated the
47 procurement.

1 4. To the extent that the offeror designates and the agent concurs,
2 trade secrets and other proprietary data contained in a proposal remain
3 confidential.

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

8 ~~I~~ J. An agent may cancel a request for qualifications or a
9 request for proposals, reject in whole or in part any or all submittals or
10 proposals, or determine not to enter into a contract as specified in the
11 solicitation if the agent determines in the agent's absolute and sole
12 discretion that the action is in the best interest of the agent. The
13 agent shall make the reasons for cancellation, rejection or determination
14 not to enter into a contract part of the contract file.

15 ~~J~~ K. If the agent does not have a procurement protest policy and
16 procedures that have been formally adopted and published by the agent, for
17 protests relating to procurements under this section the agent shall
18 follow the procurement protest policy and procedures of the department of
19 administration. The agent shall process all protests relating to
20 procurements under this section.

21 ~~K~~ L. Notwithstanding any other law, in a procurement of a single
22 contract for construction-manager-at-risk construction services for
23 horizontal construction **AND FOR PROJECTS NOT PRESCRIBED AS HORIZONTAL**
24 **CONSTRUCTION** under this section **ONLY FOR FEDERALLY FUNDED PROJECTS**, when
25 ~~the federal aviation administration or the federal transit administration~~
26 ~~is a source of monies for the project and~~ price competition is required by
27 the funding federal agency or applicable federal law, rules or
28 regulations, ~~an agent that is a city with a population in excess of one~~
29 ~~million persons or an agent that is a separate legal entity formed under~~
30 ~~section 11-952 by a city with a population in excess of one million~~
31 ~~persons and that is designated as a subgrantee by a city with a population~~
32 ~~in excess of one million persons may do a two-step competition~~ **OR FEDERAL**
33 **FUNDING AGENCY GUIDANCE, AN AGENT MAY CONDUCT A ONE-STEP REQUEST FOR**
34 **QUALIFICATIONS BEST VALUE COMPETITION** in accordance with the following:

35 1. Except as **OTHERWISE** provided in ~~paragraphs 2 and 3 of~~ this
36 subsection, all provisions of law applicable to
37 construction-manager-at-risk construction services apply to
38 construction-manager-at-risk construction services for horizontal
39 construction **AND FOR PROJECTS NOT PRESCRIBED AS HORIZONTAL CONSTRUCTION**
40 procured under this subsection, including the provisions applicable to
41 horizontal construction **AND TO PROJECTS NOT PRESCRIBED AS HORIZONTAL**
42 **CONSTRUCTION**. The requirements in section 34-605, subsection B apply only
43 if the contractor provides preconstruction services. Bid security is not
44 required under section 34-608 ~~for construction-manager-at-risk~~
45 ~~construction services for horizontal construction procured under this~~
46 ~~subsection~~, but an agent may elect to require bid security in which event
47 the bid security process and requirements shall be as set forth in section
48 34-608.

1 ~~2. In the first step of the two step competition for procurement of~~
2 ~~construction manager at risk construction services for horizontal~~
3 ~~construction, the agent shall follow the request for qualifications~~
4 ~~process and the requirements in subsection C of this section. For~~
5 ~~purposes of applying the requirements in subsection C, paragraph 1,~~
6 ~~subdivision (f), item (ii), paragraph 2, subdivision (b) and paragraph 3,~~
7 ~~subdivisions (b), (c) and (d) of this section only, a procurement under~~
8 ~~this subsection shall be deemed to be procurement of a contract to be~~
9 ~~awarded under subsection F of this section and not of a contract to be~~
10 ~~negotiated under subsection E of this section.~~

11 2. THE AGENT SHALL ISSUE A SINGLE REQUEST FOR QUALIFICATIONS AND
12 MAY, AT ITS OPTION, CONDUCT INTERVIEWS AS PART OF THE EVALUATION PROCESS.
13 IF INTERVIEWS ARE HELD, THE AGENT SHALL SPECIFY THE INTERVIEW CRITERIA AND
14 THEIR RELATIVE WEIGHTS IN THE REQUEST FOR QUALIFICATIONS. INTERVIEWS SHALL
15 ADDRESS ONLY QUALITATIVE AND TECHNICAL PROPOSALS. PRICES OR FEES MAY NOT
16 BE PART OF THE INTERVIEWS.

17 3. ~~In the second step of the two step competition~~ WHEN PROCURING
18 PROJECTS UNDER THIS SUBSECTION:

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

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

23 ~~(c)~~ (a) The request for ~~proposals~~ QUALIFICATIONS shall include:

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

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

28 (iii) A requirement that each offeror submit separately a
29 qualitative and technical proposal and a price proposal LIMITED TO THE
30 CONSTRUCTION MANAGEMENT FEE, PRECONSTRUCTION SERVICES FEE AND DESIGN
31 SERVICES FEE AND ANY OTHER PRICING ELEMENTS EXPRESSLY ALLOWED BY FEDERAL
32 GUIDANCE and that the offeror's entire proposal be responsive to the
33 requirements in the request for ~~proposals~~ QUALIFICATIONS.

34 (iv) The required contents of the qualitative and technical
35 proposals and the price proposals.

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

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

41 (vii) A statement that the agent will use the scoring method
42 described in the request for ~~proposals~~ QUALIFICATIONS to determine the
43 winning offeror and that the winning offeror will be the offeror whose
44 proposal receives the highest number of points under the scoring method.

45 (viii) A description of the scoring method. The scoring method
46 shall be a best-value method in which the agent establishes criteria to
47 score the qualitative and technical proposal and separate criteria to
48 score the price proposal and the number of points assigned to each

1 ~~criteria~~ CRITERION. The number of points assigned to price criteria shall
2 not exceed ten percent of the total number of points in the scoring
3 method.

4 ~~(ix) If the agent elects to conduct discussions pursuant to~~
5 ~~subdivision (e) of this paragraph, a statement that discussions will be~~
6 ~~held and a requirement that each offeror submit a preliminary qualitative~~
7 ~~and technical proposal before the discussions are held.~~

8 ~~(d) If the agent determines to conduct discussions pursuant to~~
9 ~~subdivision (e) of this paragraph, each offeror shall submit a preliminary~~
10 ~~qualitative and technical proposal to the agent before those discussions~~
11 ~~are held.~~

12 ~~(e) If determined by the agent and included by the agent in the~~
13 ~~request for proposals, the selection committee shall conduct discussions~~
14 ~~with all offerors solely about their preliminary qualitative and technical~~
15 ~~proposals. Discussions shall be for the purpose of clarification to~~
16 ~~ensure full understanding of, and responsiveness to, the solicitation~~
17 ~~requirements, other than price. Offerors shall be accorded fair treatment~~
18 ~~with respect to any opportunity for discussion and for clarification by~~
19 ~~the selection committee. Revision of preliminary qualitative and~~
20 ~~technical proposals shall be permitted after submission of preliminary~~
21 ~~qualitative and technical proposals and before scoring of proposals for~~
22 ~~the purpose of obtaining best and final proposals. In conducting any~~
23 ~~discussions, information derived from the preliminary qualitative and~~
24 ~~technical proposals submitted by competing offerors shall not be disclosed~~
25 ~~to other competing offerors. Price shall not be part of the discussions.~~

26 ~~(f) After completion of any discussions pursuant to subdivision (e)~~
27 ~~of this paragraph or if no discussions are held, each offeror shall submit~~
28 ~~separately the offeror's final qualitative and technical proposal and its~~
29 ~~price proposal.~~

30 ~~(g) In evaluating and scoring the offerors' proposals the selection~~
31 ~~committee shall use the scoring method specified in the request for~~
32 ~~proposals.~~

33 ~~(h)~~ (b) Before opening any price proposal, the selection committee
34 shall open the final qualitative and technical proposals, evaluate the
35 final qualitative and technical proposals and score the final qualitative
36 and technical proposals using the qualitative and technical criteria and
37 assigned points in the scoring method in the request for proposals. No
38 other factors or criteria may be used in the evaluation and scoring.

39 ~~(i)~~ (c) After completion of the evaluation and scoring of all
40 final qualitative and technical proposals, the selection committee shall
41 open the price proposals and score the price proposals using the price
42 criteria and assigned points in the scoring method in the request for
43 proposals. No other factors or criteria may be used in the evaluation and
44 scoring.

45 ~~(j)~~ (d) After evaluating and scoring the price proposals, the
46 selection committee shall add the qualitative and technical proposal score
47 and the price proposal score of each offeror together for a total

1 score. The responsive and responsible offeror with the highest total
2 score is the winning offeror.

3 ~~(k)~~ (e) The agent shall promptly notify the winning offeror that
4 it is the winner. Before or at the same time as the agent notifies the
5 winning offeror that it is the winner, the agent shall send actual notice
6 to each other offeror either that the offeror is not the winner or that
7 another offeror is the winner.

8 ~~(j)~~ (f) The contract or contracts file shall contain the basis on
9 which the award is made, including at a minimum the information and
10 documents required under subsection ~~G~~ H of this section.

11 4. Notwithstanding this subsection, an agent shall not procure any
12 construction-manager-at-risk construction services for horizontal
13 construction pursuant to this subsection after December 31, 2030. For the
14 purposes of this paragraph, an agent procures construction-manager-at-risk
15 construction services for horizontal construction pursuant to this
16 subsection when the contract for the construction-manager-at-risk
17 construction services for horizontal construction is executed by the agent
18 and the contractor. If a contract is executed for
19 construction-manager-at-risk construction services for horizontal
20 construction procured pursuant to this subsection on or before
21 December 31, 2030, construction services under the contract may be
22 rendered in whole or in part after December 31, 2030.

23 ~~L. For the purposes of this section, "professional services"~~
24 ~~includes architect services, engineer services, landscape architect~~
25 ~~services, assayer services, geologist services and land surveying services~~
26 ~~and any combination of those services.~~

27 M. NOTWITHSTANDING ANY OTHER LAW, IN A PROCUREMENT OF A SINGLE
28 CONTRACT FOR PROGRESSIVE DESIGN-BUILD SERVICES FOR HORIZONTAL CONSTRUCTION
29 AND FOR PROJECTS NOT DEFINED AS HORIZONTAL CONSTRUCTION UNDER THIS SECTION
30 ONLY FOR FEDERALLY FUNDED PROJECTS, WHEN PRICE COMPETITION IS REQUIRED BY
31 THE FUNDING FEDERAL AGENCY OR APPLICABLE FEDERAL LAW, RULES OR REGULATIONS
32 OR FEDERAL FUNDING AGENCY GUIDANCE, AN AGENT MAY CONDUCT A PROCUREMENT
33 PROCESS IN ACCORDANCE WITH THE FOLLOWING:

34 1. THE AGENT MAY PROCURE PROGRESSIVE DESIGN-BUILD CONSTRUCTION
35 SERVICES UNDER THIS SECTION FOR HORIZONTAL CONSTRUCTION AND FOR PROJECTS
36 NOT DEFINED AS HORIZONTAL CONSTRUCTION, SUBJECT TO THE REQUIREMENTS OF
37 SUBSECTIONS C AND E OF THIS SECTION AND SECTION 34-605.

38 2. THE AGENT SHALL ISSUE A SINGLE REQUEST FOR QUALIFICATIONS AND
39 MAY, AT ITS OPTION, CONDUCT INTERVIEWS AS PART OF THE EVALUATION PROCESS.
40 IF INTERVIEWS ARE HELD, THE AGENT SHALL SPECIFY THE INTERVIEW CRITERIA AND
41 THEIR RELATIVE WEIGHTS IN THE REQUEST FOR QUALIFICATIONS. INTERVIEWS
42 SHALL ADDRESS ONLY THE QUALITATIVE AND TECHNICAL PROPOSALS. PRICES OR FEES
43 MAY NOT BE PART OF THE INTERVIEWS.

44 3. WHEN PROCURING PROJECTS UNDER THIS SUBSECTION:

45 (a) THE REQUEST FOR QUALIFICATIONS SHALL INCLUDE:

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

- 1 (ii) A DESCRIPTION OF THE DESIGN-BUILD SERVICES TO BE PERFORMED
2 UNDER THE CONTRACT.
- 3 (iii) A REQUIREMENT THAT EACH OFFEROR SUBMIT SEPARATELY A
4 QUALITATIVE AND TECHNICAL PROPOSAL AND A PRICE PROPOSAL LIMITED TO THE
5 PRECONSTRUCTION SERVICES FEE, DESIGN SERVICES FEE AND CONSTRUCTION
6 MANAGEMENT FEE AND ANY OTHER PRICING ELEMENTS EXPRESSLY ALLOWED BY FEDERAL
7 GUIDANCE AND THAT THE OFFEROR'S ENTIRE PROPOSAL BE RESPONSIVE TO THE
8 REQUIREMENTS IN THE REQUEST FOR QUALIFICATIONS.
- 9 (iv) THE REQUIRED CONTENTS OF THE QUALITATIVE AND TECHNICAL
10 PROPOSALS AND THE PRICE PROPOSALS.
- 11 (v) INFORMATION TO BE USED BY OFFERORS TO PREPARE THE QUALITATIVE
12 AND TECHNICAL PROPOSALS AND THE PRICE PROPOSALS.
- 13 (vi) A STATEMENT THAT IN APPLYING THE SCORING METHOD THE SELECTION
14 COMMITTEE WILL EVALUATE AND SCORE THE QUALITATIVE AND TECHNICAL PROPOSALS
15 BEFORE OPENING THE PRICE PROPOSALS.
- 16 (vii) A STATEMENT THAT THE AGENT WILL USE THE SCORING METHOD
17 DESCRIBED IN THE REQUEST FOR QUALIFICATIONS TO DETERMINE THE WINNING
18 OFFEROR AND THAT THE WINNING OFFEROR WILL BE THE OFFEROR WHOSE PROPOSAL
19 RECEIVES THE HIGHEST NUMBER OF POINTS UNDER THE SCORING METHOD.
- 20 (viii) A DESCRIPTION OF THE SCORING METHOD. THE SCORING METHOD
21 SHALL BE A BEST-VALUE METHOD IN WHICH THE AGENT ESTABLISHES CRITERIA TO
22 SCORE THE QUALITATIVE AND TECHNICAL PROPOSAL AND SEPARATE CRITERIA TO
23 SCORE THE PRICE PROPOSAL AND THE NUMBER OF POINTS ASSIGNED TO EACH
24 CRITERION. THE NUMBER OF POINTS ASSIGNED TO PRICE CRITERIA SHALL NOT
25 EXCEED TEN PERCENT OF THE TOTAL NUMBER OF POINTS IN THE SCORING METHOD.
- 26 (b) BEFORE OPENING ANY PRICE PROPOSAL, THE SELECTION COMMITTEE
27 SHALL OPEN THE FINAL QUALITATIVE AND TECHNICAL PROPOSALS, EVALUATE THE
28 FINAL QUALITATIVE AND TECHNICAL PROPOSALS AND SCORE THE FINAL QUALITATIVE
29 AND TECHNICAL PROPOSALS USING THE QUALITATIVE AND TECHNICAL CRITERIA AND
30 ASSIGNED POINTS IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS. NO
31 OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND SCORING.
- 32 (c) AFTER COMPLETION OF THE EVALUATION AND SCORING OF ALL FINAL
33 QUALITATIVE AND TECHNICAL PROPOSALS, THE SELECTION COMMITTEE SHALL OPEN
34 THE PRICE PROPOSALS AND SCORE THE PRICE PROPOSALS USING THE PRICE CRITERIA
35 AND ASSIGNED POINTS IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS. NO
36 OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND SCORING.
- 37 (d) AFTER EVALUATING AND SCORING THE PRICE PROPOSALS, THE SELECTION
38 COMMITTEE SHALL ADD THE QUALITATIVE AND TECHNICAL PROPOSAL SCORE AND THE
39 PRICE PROPOSAL SCORE OF EACH OFFEROR TOGETHER FOR A TOTAL SCORE. THE
40 RESPONSIVE AND RESPONSIBLE OFFEROR WITH THE HIGHEST TOTAL SCORE IS THE
41 WINNING OFFEROR.
- 42 (e) THE AGENT SHALL PROMPTLY NOTIFY THE WINNING OFFEROR THAT IT IS
43 THE WINNER. BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE WINNING
44 OFFEROR THAT IT IS THE WINNER, THE AGENT SHALL SEND ACTUAL NOTICE TO EACH
45 OTHER OFFEROR EITHER THAT THE OFFEROR IS NOT THE WINNER OR THAT ANOTHER
46 OFFEROR IS THE WINNER.

1 (f) THE CONTRACT OR CONTRACTS FILE SHALL CONTAIN THE BASIS ON WHICH
2 THE AWARD IS MADE, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS
3 REQUIRED UNDER SUBSECTION H OF THIS SECTION.

4 4. NOTWITHSTANDING SUBSECTION F, PARAGRAPH 11 OF THIS SECTION,
5 STIPULATED FEES TO UNSUCCESSFUL OFFERORS SHALL NOT BE PAID IN PROGRESSIVE
6 DESIGN-BUILD PROCUREMENTS UNDER THIS SUBSECTION.

7 5. AN AGENT SHALL NOT PROCURE PROGRESSIVE DESIGN-BUILD CONSTRUCTION
8 SERVICES PURSUANT TO THIS SUBSECTION AFTER DECEMBER 31, 2030. FOR THE
9 PURPOSES OF THIS PARAGRAPH, AN AGENT PROCURES PROGRESSIVE DESIGN-BUILD
10 CONSTRUCTION SERVICES PURSUANT TO THIS SUBSECTION WHEN THE CONTRACT FOR
11 PROGRESSIVE DESIGN-BUILD CONSTRUCTION SERVICES IS EXECUTED BY THE AGENT
12 AND THE CONTRACTOR. IF A CONTRACT IS EXECUTED FOR PROGRESSIVE DESIGN-BUILD
13 CONSTRUCTION SERVICES PROCURED PURSUANT TO THIS SUBSECTION ON OR BEFORE
14 DECEMBER 31, 2030, CONSTRUCTION SERVICES UNDER THE CONTRACT MAY BE
15 RENDERED IN WHOLE OR IN PART AFTER DECEMBER 31, 2030.

16 N. FOR PURPOSES OF THIS SECTION, "PROGRESSIVE DESIGN-BUILD" MEANS A
17 PROJECT DELIVERY PROCESS IN WHICH ALL OF THE FOLLOWING APPLY:

18 1. BOTH THE DESIGN AND CONSTRUCTION OF THE PROJECT ARE PROCURED
19 FROM A SINGLE ENTITY SELECTED THROUGH A QUALIFICATIONS-BASED SELECTION AT
20 THE EARLIEST FEASIBLE STAGE OF THE PROJECT.

21 2. THE AGENT ENTERS INTO A CONTRACT FOR PRECONSTRUCTION AND DESIGN
22 SERVICES.

23 3. A FIXED PRICE OR GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION IS
24 SUBSEQUENTLY NEGOTIATED AFTER SUFFICIENT DESIGN ADVANCEMENT.

25 Sec. 4. Section 34-605, Arizona Revised Statutes, is amended to
26 read:

27 34-605. Requirements applicable to construction services and
28 professional services and to contracts for
29 construction services and professional services:
30 definition

31 A. The requirements prescribed in this section apply to each
32 contract entered into as the result of a procurement under section 34-603,
33 34-604 or 34-606 and to the professional services and construction
34 services included in each procurement under section 34-603, 34-604 or
35 34-606.

36 B. If a procurement under section 34-603 is for
37 construction-manager-at-risk construction services or design-build
38 construction services to be contracted pursuant to section 34-603,
39 subsection E or if a procurement under section 34-606 is for
40 construction-manager-at-risk construction services or design-build
41 construction services, the agent shall enter into a written contract with
42 the contractor for preconstruction services under which the agent shall
43 pay the contractor a fee for preconstruction services in an amount agreed
44 by the agent and the contractor, and the agent shall not request or obtain
45 a fixed price or a guaranteed maximum price for the construction from the
46 contractor or enter into a construction contract with the contractor until
47 after the agent has entered into the written contract for preconstruction
48 services and a preconstruction services fee.

1 C. If a contract for construction services is entered into as the
2 result of a procurement under section 34-603, 34-604 or 34-606,
3 construction shall not commence until the agent and contractor agree in
4 writing on either a fixed price that the agent will pay for the
5 construction to be commenced or a guaranteed maximum price for the
6 construction to be commenced. The construction to be commenced may be the
7 entire project or may be one or more phased parts of the project.

8 D. A contract for professional services entered into as the result
9 of a procurement under section 34-603, 34-604 or 34-606 shall have a term
10 not exceeding five years after the date of contract award by the agent of
11 the first contract under the procurement, except that the contract may
12 continue in effect after the five-year term for professional services on
13 projects on which the rendering of professional services commences within
14 the five-year term.

15 E. Notwithstanding any other law:

16 1. The contractor for design-build or job-order-contracting
17 construction services is not required to be registered to perform design
18 services pursuant to title 32, chapter 1 if the person or firm actually
19 performing the design services on behalf of the contractor is
20 appropriately registered.

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

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

25 1. The maximum dollar amount of an individual job order shall be
26 \$1,000,000 or such higher or lower amount prescribed by the agent in an
27 action noticed pursuant to title 38, chapter 3, article 3.1 or a rule
28 adopted by the agent as the maximum amount of an individual job order.
29 Requirements shall not be artificially divided or fragmented in order to
30 constitute a job order that satisfies this requirement.

31 2. If the contractor subcontracts or intends to subcontract part or
32 all of the work under a job order and if the job-order-contracting
33 construction services contract includes descriptions of standard
34 individual tasks, standard unit prices for standard individual tasks and
35 pricing of job orders based on the number of units of standard individual
36 tasks in the job order:

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

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

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

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

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

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

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

10 G. The following apply to horizontal construction:

11 1. Notwithstanding this chapter, an agent shall not procure any
12 horizontal construction using the construction-manager-at-risk,
13 design-build or job-order-contracting method of project delivery after
14 December 31, 2030. For purposes of this paragraph, an agent procures
15 horizontal construction when the contract for the construction services is
16 executed by the agent and the contractor for the
17 construction-manager-at-risk, design-build or job-order-contracting
18 construction services. If a contract is executed for construction
19 services on or before December 31, 2030, construction services under the
20 contract may be rendered in whole or in part after December 31, 2030.

21 2. For each horizontal construction project under a design-build or
22 construction-manager-at-risk construction services contract, the licensed
23 contractor performing the contract shall perform, with the contractor's
24 own organization, construction work that amounts to not less than
25 forty-five percent of the total contract price for the construction,
26 except that for light rail the self-performance percentage shall be not
27 less than thirty percent.

28 3. A project is horizontal construction if more than one-half of
29 the total contract price for the construction is for horizontal
30 construction. Project elements shall not be artificially added in order
31 to make a project not horizontal construction and shall not be
32 artificially deleted in order to make a project horizontal construction.

33 4. The total contract price for the construction does not include
34 the cost of preconstruction services, design services or any other related
35 services or the cost to procure any right-of-way or other cost of
36 condemnation.

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

39 1. Enter into a contract as contractor to provide
40 construction-manager-at-risk construction services, design-build
41 construction services or job-order-contracting construction services.

42 2. Contract with itself, with another agent, with this state or
43 with any other governmental unit of this state or the federal government
44 for the agent to provide construction-manager-at-risk construction
45 services, design-build construction services or job-order-contracting
46 construction services.

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

4 J. The agent shall include in each contract for construction
5 services the full street or physical address of each separate location at
6 which the construction will be performed and a requirement that the
7 contractor and each subcontractor at any level include in each of its
8 subcontracts the same address information. The contractor and each
9 subcontractor at any level shall include in each subcontract the full
10 street or physical address of each separate location at which construction
11 work will be performed.

12 K. The following apply to all construction services procured under
13 this chapter:

14 1. The contractor performing the construction services is permitted
15 to self-perform part of the construction work if and to the extent agreed
16 in writing by the agent and the contractor. The agent may use methods
17 other than competitive bidding to assure itself that the price the agent
18 pays to the contractor for self-performed work is fair and reasonable.
19 Allowable methods to evaluate fairness and reasonableness of the price of
20 self-performed work include evaluating the contractor's proposed scope of
21 work and price for self-performed work by an estimator who is hired and
22 paid by the agent, who is independent of the contractor and who may be an
23 employee of the agent. Although the agent may elect to so require, this
24 chapter, this title or any other law shall not be construed or interpreted
25 to require the agent to require a contractor desiring to self-perform part
26 of the construction work to competitively bid that part of the
27 construction work against other contractors in a bid competition.

28 2. The following requirements apply to the construction work to be
29 performed by subcontractors and do not apply to construction work that the
30 agent and the contractor agree in writing will be self-performed by the
31 contractor:

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

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

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

47 (ii) If the agent did not include its subcontractor selection plan
48 in the request for qualifications, the subcontractor selection plan

1 proposed by the selected person or firm in submitting its qualifications
2 with those modifications as the agent and the selected person or firm
3 agree.

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

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

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

23 Amend title to conform

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