

REFERENCE TITLE: procurement; professionals; construction services

State of Arizona  
House of Representatives  
Fifty-seventh Legislature  
Second Regular Session  
2026

# HB 2692

Introduced by  
Representative Livingston

AN ACT

AMENDING SECTIONS 34-101, 34-603 AND 34-605, ARIZONA REVISED STATUTES;  
RELATING TO PUBLIC BUILDINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 34-101, 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.  
38 (ii) Concurrent with the design produced in two or more phases and  
39 construction of some phases commencing before the entire design is  
40 complete.  
41 (d) Finance services, maintenance services, operations services,  
42 preconstruction services and other related services may be included.  
43 5. "Construction services" means either of the following for  
44 construction-manager-at-risk, design-build and job-order-contracting  
45 project delivery methods:

1 (a) Construction, excluding services, through the  
2 construction-manager-at-risk or job-order-contracting project delivery  
3 methods.

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

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

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

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

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

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

17 (c) The second contract is for construction.

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

20 (e) Finance services, maintenance services and operations services  
21 are not included.

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

23 (a) There is a single contract for design services and construction  
24 services, except that instead of a single contract for design services and  
25 construction services, the agent may elect separate contracts for  
26 preconstruction services and design services during the design phase, for  
27 construction and design services during the construction phase and for any  
28 other construction services.

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

30 (i) Sequential with the entire design complete before construction  
31 commences.

32 (ii) Concurrent with the design produced in two or more phases and  
33 construction of some phases commencing before the entire design is  
34 complete.

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

37 10. "Design professional" means an individual or firm that is  
38 registered by the state board of technical registration pursuant to title  
39 32, chapter 1 to practice architecture, engineering, geology, landscape  
40 architecture or land surveying or any combination of those professions and  
41 persons employed by the registered individual or firm.

42 11. "Design requirements":

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

- 1 (i) The required features, functions, characteristics, qualities  
2 and properties.
- 3 (ii) The anticipated schedule, including start, duration and  
4 completion.
- 5 (iii) The estimated budgets applicable to the specific procurement  
6 for design and construction and, if applicable, for operation and  
7 maintenance.
- 8 (b) May include:
- 9 (i) Drawings and other documents illustrating the scale and  
10 relationship of the features, functions and characteristics of the  
11 project, which shall all be prepared by a design professional who is  
12 registered pursuant to section 32-121.
- 13 (ii) Additional design information or documents that the agent  
14 elects to include.
- 15 12. "Design services" means architect services, engineer services  
16 or landscape architect services.
- 17 13. "Direct selection" means the selection of a technical  
18 registrant without the requirement of advertising or the use of a current  
19 register.
- 20 14. "Engineer services" means those professional engineer services  
21 that are within the scope of engineering practice as provided in title 32,  
22 chapter 1.
- 23 15. "Finance services" means financing for a construction services  
24 project.
- 25 16. "Horizontal construction" means construction of highways,  
26 roads, streets, PIPELINES, bridges, canals, floodways, earthen dams,  
27 landfills, light rail and airport runways, taxiways and aprons. For the  
28 purposes of this paragraph: ~~;~~
- 29 (a) Light rail does not include any related rail stations,  
30 maintenance facilities or parking facilities.
- 31 (b) PIPELINES DO NOT INCLUDE MUNICIPALLY OWNED NATURAL GAS  
32 PIPELINES, REGULATOR STATIONS FOR GAS PIPELINES, GATE STATIONS FOR GAS  
33 PIPELINES OR METER ASSEMBLIES FOR GAS PIPELINES.
- 34 17. "Job-order-contracting" means a project delivery method in  
35 which:
- 36 (a) The contract is a requirements contract for indefinite  
37 quantities of construction.
- 38 (b) The construction to be performed is specified in job orders  
39 issued during the contract.
- 40 (c) Finance services, maintenance services, operations services,  
41 preconstruction services, design services and other related services may  
42 be included.
- 43 18. "Landscape architect services" means those professional  
44 landscape architect services that are within the scope of landscape  
45 architectural practice as provided in title 32, chapter 1.

1           19. "Maintenance services" means routine maintenance, repair and  
2 replacement of existing facilities, structures, buildings or real  
3 property.

4           20. "Materials":

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

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

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

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

13           23. "Preconstruction services" means services and other activities  
14 during the design phase.

15           24. "Procurement":

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

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

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

25           26. "Services":

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

29           (b) Does not include employment agreements or collective bargaining  
30 agreements.

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

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

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

38           34-603. Procurement of professional services and  
39           construction-manager-at-risk, design-build and  
40           job-order-contracting construction services;  
41           definition

42           A. Except for services that are under a single contract and that an  
43 agent procures pursuant to section 34-103 or 34-606, an agent shall  
44 procure a single contract for the following services pursuant to this  
45 section:

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

13 B. An agent shall provide notice of each procurement of  
14 professional services or construction services specified in this section  
15 and shall award the single contract on the basis of demonstrated  
16 competence and qualifications for the type of professional services or  
17 construction services pursuant to the procedures prescribed in this  
18 section.

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

21 1. The following requirements apply:

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

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

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

38 (i) For construction-manager-at-risk construction services, an  
39 agent may elect separate contracts for preconstruction services during the  
40 design phase, for construction during the construction phase and for any  
41 other construction services.

42 (ii) For design-build construction services, an agent may elect  
43 separate contracts for preconstruction services and design services during  
44 the design phase, for construction and design services during the  
45 construction phase and for any other construction services.

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

3 (d) All construction-manager-at-risk construction services or  
4 design-build construction services included in a procurement under  
5 this section shall be limited to construction services to be performed at  
6 a single location, a common location or, if the construction services are  
7 all for a similar purpose, multiple locations. For  
8 construction-manager-at-risk construction services and design-build  
9 construction services to be performed at multiple locations:

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

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

16 (e) If the agent enters into the first contract for preconstruction  
17 services, construction services or professional services as the result of  
18 the procurement, the procurement under this section ends. After execution  
19 of that first contract the agent may not use the procurement or the  
20 existing final list in the procurement as the basis for entering into a  
21 contract with any other person or firm that participated in the  
22 procurement.

23 (f) Notwithstanding any other provision of this section specifying  
24 the number of persons or firms to be interviewed, the number of persons or  
25 firms to be on a final list or any other numerical specification in this  
26 section:

27 (i) If a smaller number of persons or firms respond to the request  
28 for qualifications or if one or more persons or firms drop out of the  
29 procurement so that there is a smaller number of persons or firms  
30 participating in the procurement, the agent may elect to proceed with the  
31 procurement with the participating persons or firms if there are at least  
32 two participating responsive and responsible persons or firms.  
33 Alternatively, the agent may elect to terminate the procurement.

34 (ii) As to a request for qualifications for professional services  
35 or construction services to be negotiated pursuant to subsection E of this  
36 section only, if only one responsive and responsible person or firm  
37 responds to the request for qualifications or, if one or more persons or  
38 firms drop out of the procurement so that only one responsive and  
39 responsible person or firm remains in the procurement, the agent may elect  
40 to proceed with the procurement with only one person or firm if the agent  
41 determines in writing that the fee negotiated pursuant to subsection E of  
42 this section is fair and reasonable and that either other prospective  
43 persons or firms had reasonable opportunity to respond or there is not  
44 adequate time for a resolicitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 negotiated under subsection E of this section, rank the persons or firms  
2 on the final list in order of preference.

3 (c) If the contract will be negotiated under subsection E of this  
4 section, before or at the same time as the agent notifies the highest  
5 ranking person or firm on the final list that it is the highest ranking  
6 person or firm, the agent shall send actual notice to each of the  
7 following that it is not the highest person or firm on the final list or  
8 that another person or firm is the highest ranking person or firm on the  
9 final list:

10 (i) If interviews were held, the other persons and firms  
11 interviewed.

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

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

20 (i) If interviews were held, the other persons or firms  
21 interviewed.

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

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

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

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

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

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

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

1           5. If in a procurement under this section the agent terminates  
2 negotiations with a person or firm on the final list and commences  
3 negotiations with another person or firm on the final list, the agent  
4 shall not in that procurement recommence negotiations or enter into a  
5 contract for the construction services or professional services covered by  
6 the final list with any person or firm on the final list with whom the  
7 agent has terminated negotiations.

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

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

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

16           3. The request for proposals shall include:

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

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

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

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

28           (ii) Offeror qualifications.

29           (iii) Offeror financial capacity.

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

31           (v) For design-build construction services only, if the request for  
32 proposals specifies that the agent will spend its project budget and not  
33 more than its project budget and is seeking the best proposal for the  
34 project budget, compliance of the offeror's price or life cycle price for  
35 procurements that include maintenance services, operations services or  
36 finance services with the agent's budget as prescribed in the request for  
37 proposals.

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

43           (vii) An offeror quality management plan.

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

4 (d) For design-build construction services only, the design  
5 requirements.

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

11 (f) A statement that in applying the scoring method the selection  
12 committee will separately evaluate the technical proposal and the price  
13 proposal and will evaluate and score the technical proposal before opening  
14 the price proposal.

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

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

22 5. If determined by the agent and included by the agent in the  
23 request for proposals, the selection committee shall conduct discussions  
24 with all offerors that submit preliminary technical proposals.  
25 Discussions shall be for the purpose of clarification to ensure full  
26 understanding of, and responsiveness to, the solicitation requirements.  
27 Offerors shall be accorded fair treatment with respect to any opportunity  
28 for discussion and for clarification by the owner. Revision of  
29 preliminary technical proposals shall be permitted after submission of  
30 preliminary technical proposals and before award for the purpose of  
31 obtaining best and final proposals. In conducting any discussions,  
32 information derived from proposals submitted by competing offerors shall  
33 not be disclosed to other competing offerors.

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

37 7. Before opening any price proposal, the selection committee shall  
38 open the final technical proposals, evaluate the final technical proposals  
39 and score the final technical proposals using the scoring method in the  
40 request for proposals. No other factors or criteria may be used in the  
41 evaluation and scoring.

42 8. After completion of the evaluation and scoring of all final  
43 technical proposals, the selection committee shall open the price  
44 proposals, evaluate the price proposals, score the price proposals and  
45 complete the scoring of the entire proposals using the scoring method in

1 the request for proposals. No other factors or criteria may be used in  
2 the evaluation and scoring.

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

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

13 11. For design-build construction services only, the agent shall  
14 award a stipulated fee equal to a percentage, as prescribed in the request  
15 for proposals, of the agent's project final budget for design and  
16 construction, as prescribed in the request for proposals, but at least  
17 four-tenths of one percent of the project final budget for design and  
18 construction to each final list offeror who provides a responsive, but  
19 unsuccessful, proposal. If the agent does not award a contract, all  
20 responsive final list offerors shall receive the stipulated fee based on  
21 the owner's project final budget for design and construction as included  
22 in the request for proposals. The agent shall pay the stipulated fee to  
23 each offeror within ninety days after the award of the initial contract or  
24 the decision not to award a contract. In consideration for paying the  
25 stipulated fee, the agent may use any ideas or information contained in  
26 the proposals in connection with any contract awarded for the project, or  
27 in connection with a subsequent procurement, without any obligation to pay  
28 any additional compensation to the offerors. Notwithstanding the other  
29 provisions of this paragraph, an offeror may elect to waive the stipulated  
30 fee. If an offeror elects to waive the stipulated fee, the agent may not  
31 use ideas and information contained in the offeror's proposal, except that  
32 this restriction does not prevent the agent from using any idea or  
33 information if the idea or information is also included in a proposal of  
34 an offeror that accepts the stipulated fee.

35 G. AS AN ALTERNATIVE TO SUBSECTIONS E AND F OF THIS SECTION, AN  
36 AGENT MAY AWARD A SINGLE CONTRACT FOR JOB-ORDER-CONTRACTING CONSTRUCTION  
37 SERVICES AS FOLLOWS:

38 1. THE AGENT MAY USE A COOPERATIVE PURCHASING AGREEMENT TO PROCURE  
39 A CONTRACT FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IF THE  
40 COOPERATIVE AGREEMENT COMPLIES WITH ALL OF THE FOLLOWING:

41 (a) THE PUBLIC PROCUREMENT UNIT AS DEFINED IN SECTION 41-2631  
42 CONDUCTING OR ADMINISTERING THE COOPERATIVE PURCHASING AGREEMENT TO  
43 PROCURE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES COMPLIES WITH THE  
44 REQUIREMENTS OF SUBSECTION E OR F OF THIS SECTION AND SECTION 41-2632.

1 (b) THE AGENT ENTERS INTO THE JOB-ORDER-CONTRACTING CONSTRUCTION  
2 SERVICES CONTRACT FOR A SINGLE PROJECT.

3 (c) THE SINGLE PROJECT SCOPE OF WORK IS CONSISTENT WITH THE SCOPE  
4 OF WORK DESCRIBED IN THE COOPERATIVE AGREEMENT.

5 (d) THE SINGLE PROJECT VALUE DOES NOT EXCEED THE MAXIMUM JOB ORDER  
6 VALUE ESTABLISHED BY THE COOPERATIVE AGREEMENT.

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

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

11 (a) If interviews were not held:

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

15 (ii) The final list.

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

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

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

30 (b) If interviews were held:

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

34 (ii) The final list.

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

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

41 (v) A document or documents that show the final score or rank on  
42 each selection criterion of each person or firm that was interviewed and  
43 that support the final overall rankings and scores of the persons or firms  
44 that were interviewed. At the election of the agent, this documentation  
45 may be in the form of a consolidated scoring sheet for the entire

1 selection committee, in the form of individual scoring sheets for  
2 individual selection committee members or any other form as determined by  
3 the agent.

4 (vi) A list of the selection criteria and relative weight of the  
5 selection criteria used to select the persons or firms for the short list  
6 to be interviewed.

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

11 (viii) A document or documents that show the final score or rank on  
12 each selection criterion of each person or firm that submitted  
13 qualifications and that support the final overall rankings and scores of  
14 the persons or firms that submitted qualifications in the selection of the  
15 persons or firms to be on the short list to be interviewed. At the  
16 election of the agent, this documentation may be in the form of a  
17 consolidated scoring sheet for the entire selection committee, in the form  
18 of individual scoring sheets for the individual selection committee  
19 members or any other form as determined by the agent.

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

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

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

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

31 (d) A document or documents that show the final score on each  
32 factor in the scoring method in the request for proposals of each offeror  
33 that submitted a proposal and that support the final overall scores of the  
34 offerors that submitted proposals. At the election of the agent, this  
35 documentation may be in the form of a consolidated scoring sheet for the  
36 entire selection committee, in the form of individual scoring sheets for  
37 individual selection committee members or in any other form as determined  
38 by the agent.

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

41 1. Notwithstanding title 39, chapter 1, article 2, until the agent  
42 awards a contract or terminates the procurement, only the name of each  
43 person or firm on the final list developed pursuant to subsection C or  
44 ~~subsection K, paragraph 2~~ N of this section may be made available to the  
45 public. All other information received by the agent in response to the

1 request for qualifications pursuant to subsection C or ~~subsection K,~~  
 2 ~~paragraph 2~~ N of this section or contained in proposals submitted pursuant  
 3 to subsection F or ~~subsection K, paragraph 3~~ N of this section shall be  
 4 confidential in order to avoid disclosure of the contents that may be  
 5 prejudicial to competing submitters and offerors during the selection  
 6 process.

7 2. After the agent awards the contract or terminates the  
 8 procurement, the agent shall make available to the public pursuant to  
 9 title 39, chapter 1, article 2 at a minimum all of the items that the  
 10 agent is required to retain under subsection ~~G~~ H of this section, except  
 11 the proposals submitted in response to a request for proposals under  
 12 subsection F or ~~subsection K, paragraph 3~~ L of this section and the  
 13 document or documents prescribed in subsection ~~G~~ H, paragraph 1,  
 14 subdivision (a), item (v) and subdivision (b), items (v) and (viii) and  
 15 paragraph 2, subdivision (d) of this section.

16 3. The proposals submitted under subsection F or ~~subsection K,~~  
 17 ~~paragraph 3~~ L of this section shall not be made available to the public  
 18 until after the agent has entered into a contract or terminated the  
 19 procurement. At a minimum the proposals submitted under subsection F or  
 20 ~~subsection K, paragraph 3~~ L of this section that the agent is required to  
 21 retain under subsection ~~G~~ H of this section shall be made available to  
 22 the public after the agent has entered into a contract or terminated the  
 23 procurement.

24 4. To the extent that the offeror designates and the agent concurs,  
 25 trade secrets and other proprietary data contained in a proposal remain  
 26 confidential.

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

31 ~~I~~ J. An agent may cancel a request for qualifications or a  
 32 request for proposals, reject in whole or in part any or all submittals or  
 33 proposals, or determine not to enter into a contract as specified in the  
 34 solicitation if the agent determines in the agent's absolute and sole  
 35 discretion that the action is in the best interest of the agent. The  
 36 agent shall make the reasons for cancellation, rejection or determination  
 37 not to enter into a contract part of the contract file.

38 ~~J~~ K. If the agent does not have a procurement protest policy and  
 39 procedures that have been formally adopted and published by the agent, for  
 40 protests relating to procurements under this section the agent shall  
 41 follow the procurement protest policy and procedures of the department of  
 42 administration. The agent shall process all protests relating to  
 43 procurements under this section.

44 ~~K~~ L. Notwithstanding any other law, in a procurement of a single  
 45 contract for construction-manager-at-risk construction services for

1 ~~horizontal construction under this section when the federal aviation~~  
2 ~~administration or the federal transit administration is a source of monies~~  
3 ~~for the project and price competition is required by the funding federal~~  
4 ~~agency or applicable federal law, rules or regulations, an agent that is a~~  
5 ~~city with a population in excess of one million persons or an agent that~~  
6 ~~is a separate legal entity formed under section 11-952 by a city with a~~  
7 ~~population in excess of one million persons and that is designated as a~~  
8 ~~subgrantee by a city with a population in excess of one million persons~~  
9 ~~may do a two-step competition in accordance with the following:~~ PUBLIC  
10 INFRASTRUCTURE PROJECTS UNDER THIS SECTION ONLY FOR FEDERALLY FUNDED  
11 PROJECTS, WHEN PRICE COMPETITION IS REQUIRED BY APPLICABLE FEDERAL LAW,  
12 RULES OR REGULATIONS OR FEDERAL FUNDING AGENCY GUIDANCE, AN AGENT MAY  
13 CONDUCT A ONE-STEP REQUEST FOR PROPOSALS BEST VALUE COMPETITION IN  
14 ACCORDANCE WITH THE FOLLOWING:

15 1. Except as provided in ~~paragraphs 2 and 3 of~~ this subsection, all  
16 provisions of law applicable to construction-manager-at-risk construction  
17 services apply to construction-manager-at-risk construction services for  
18 ~~horizontal construction~~ PUBLIC INFRASTRUCTURE procured under this  
19 subsection, including the provisions applicable to ~~horizontal construction~~  
20 SUCH PROJECTS. The requirements in section 34-605, subsection B apply  
21 only if the contractor provides preconstruction services. Bid security is  
22 not required under section 34-608 ~~for construction-manager-at-risk~~  
23 ~~construction services for horizontal construction procured under this~~  
24 ~~subsection~~, but an agent may elect to require bid security, in which event  
25 the bid security process and requirements shall be as set forth in section  
26 34-608.

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

37 ~~3. In the second step of the two-step competition:~~  
38 ~~(a) The agent shall use the selection committee appointed for the~~  
39 ~~request for qualifications pursuant to subsection C of this section.~~  
40 ~~(b) The agent shall issue a request for proposals to the offerors~~  
41 ~~on the final list developed pursuant to subsection C of this section.~~  
42 ~~(c) The request for proposals shall include:~~  
43 ~~(i) A statement that one contract may or will be awarded and that~~  
44 ~~one offeror may or will be awarded the contract.~~

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

3 ~~(iii) A requirement that each offeror submit separately a~~  
4 ~~qualitative and technical proposal and a price proposal and that the~~  
5 ~~offeror's entire proposal be responsive to the requirements in the request~~  
6 ~~for proposals.~~

7 ~~(iv) The required contents of the qualitative and technical~~  
8 ~~proposals and the price proposals.~~

9 ~~(v) Information to be used by offerors to prepare the qualitative~~  
10 ~~and technical proposals and the price proposals.~~

11 ~~(vi) A statement that in applying the scoring method the selection~~  
12 ~~committee will evaluate and score the qualitative and technical proposals~~  
13 ~~before opening the price proposals.~~

14 ~~(vii) A statement that the agent will use the scoring method~~  
15 ~~described in the request for proposals to determine the winning offeror~~  
16 ~~and that the winning offeror will be the offeror whose proposal receives~~  
17 ~~the highest number of points under the scoring method.~~

18 ~~(viii) A description of the scoring method. The scoring method~~  
19 ~~shall be a best-value method in which the agent establishes criteria to~~  
20 ~~score the qualitative and technical proposal and separate criteria to~~  
21 ~~score the price proposal and the number of points assigned to each~~  
22 ~~criteria. The number of points assigned to price criteria shall not~~  
23 ~~exceed ten percent of the total number of points in the scoring method.~~

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

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

32 ~~(e) If determined by the agent and included by the agent in the~~  
33 ~~request for proposals, the selection committee shall conduct discussions~~  
34 ~~with all offerors solely about their preliminary qualitative and technical~~  
35 ~~proposals. Discussions shall be for the purpose of clarification to~~  
36 ~~ensure full understanding of, and responsiveness to, the solicitation~~  
37 ~~requirements, other than price. Offerors shall be accorded fair treatment~~  
38 ~~with respect to any opportunity for discussion and for clarification by~~  
39 ~~the selection committee. Revision of preliminary qualitative and~~  
40 ~~technical proposals shall be permitted after submission of preliminary~~  
41 ~~qualitative and technical proposals and before scoring of proposals for~~  
42 ~~the purpose of obtaining best and final proposals. In conducting any~~  
43 ~~discussions, information derived from the preliminary qualitative and~~  
44 ~~technical proposals submitted by competing offerors shall not be disclosed~~  
45 ~~to other competing offerors. Price shall not be part of the discussions.~~

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

5 ~~(g) In evaluating and scoring the offerors' proposals the selection~~  
6 ~~committee shall use the scoring method specified in the request for~~  
7 ~~proposals.~~

8 ~~(h) Before opening any price proposal, the selection committee~~  
9 ~~shall open the final qualitative and technical proposals, evaluate the~~  
10 ~~final qualitative and technical proposals and score the final qualitative~~  
11 ~~and technical proposals using the qualitative and technical criteria and~~  
12 ~~assigned points in the scoring method in the request for proposals. No~~  
13 ~~other factors or criteria may be used in the evaluation and scoring.~~

14 ~~(i) After completion of the evaluation and scoring of all final~~  
15 ~~qualitative and technical proposals, the selection committee shall open~~  
16 ~~the price proposals and score the price proposals using the price criteria~~  
17 ~~and assigned points in the scoring method in the request for proposals.~~  
18 ~~No other factors or criteria may be used in the evaluation and scoring.~~

19 ~~(j) After evaluating and scoring the price proposals, the selection~~  
20 ~~committee shall add the qualitative and technical proposal score and the~~  
21 ~~price proposal score of each offeror together for a total score. The~~  
22 ~~responsive and responsible offeror with the highest total score is the~~  
23 ~~winning offeror.~~

24 ~~(k) The agent shall promptly notify the winning offeror that it is~~  
25 ~~the winner. Before or at the same time as the agent notifies the winning~~  
26 ~~offeror that it is the winner, the agent shall send actual notice to each~~  
27 ~~other offeror either that the offeror is not the winner or that another~~  
28 ~~offeror is the winner.~~

29 ~~(l) The contract or contracts file shall contain the basis on which~~  
30 ~~the award is made, including at a minimum the information and documents~~  
31 ~~required under subsection 6 of this section.~~

32 ~~4. Notwithstanding this subsection, an agent shall not procure any~~  
33 ~~construction-manager-at-risk construction services for horizontal~~  
34 ~~construction pursuant to this subsection after December 31, 2030. For the~~  
35 ~~purposes of this paragraph, an agent procures construction-manager-at-risk~~  
36 ~~construction services for horizontal construction pursuant to this~~  
37 ~~subsection when the contract for the construction-manager-at-risk~~  
38 ~~construction services for horizontal construction is executed by the agent~~  
39 ~~and the contractor. If a contract is executed for~~  
40 ~~construction-manager-at-risk construction services for horizontal~~  
41 ~~construction procured pursuant to this subsection on or before~~  
42 ~~December 31, 2030, construction services under the contract may be~~  
43 ~~rendered in whole or in part after December 31, 2030.~~

44 ~~2. THE AGENT SHALL ISSUE A SINGLE REQUEST FOR PROPOSALS TO~~  
45 ~~RESPONSIVE AND RESPONSIBLE OFFERORS AND MAY, AT ITS OPTION, CONDUCT~~

1 INTERVIEWS AS PART OF THE EVALUATION PROCESS. IF INTERVIEWS ARE HELD, THE  
2 AGENT SHALL SPECIFY THE INTERVIEW CRITERIA AND THEIR RELATIVE WEIGHTS IN  
3 THE REQUEST FOR PROPOSALS. INTERVIEWS SHALL ADDRESS ONLY QUALITATIVE AND  
4 TECHNICAL PROPOSALS. PRICES OR FEES MAY NOT BE PART OF THE INTERVIEWS.

5 3. THE REQUEST FOR PROPOSALS SHALL:

6 (a) STATE THAT ONE CONTRACT MAY OR WILL BE AWARDED.

7 (b) DESCRIBE THE CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES  
8 TO BE PERFORMED.

9 (c) REQUIRE SEPARATE QUALITATIVE AND TECHNICAL PROPOSALS AND, ONLY  
10 IF REQUIRED BY APPLICABLE FEDERAL LAW, RULES OR REGULATIONS OR FEDERAL  
11 FUNDING AGENCY GUIDANCE, A PRICE OR FEE PROPOSAL LIMITED TO THE  
12 CONSTRUCTION MANAGEMENT FEE, PRECONSTRUCTION SERVICES FEE, DESIGN SERVICES  
13 FEE AND ANY OTHER PRICING ELEMENTS EXPRESSLY ALLOWED BY FEDERAL GUIDANCE.

14 (d) SPECIFY REQUIRED CONTENTS FOR EACH PROPOSAL.

15 (e) PROVIDE INFORMATION TO BE USED BY OFFERORS TO PREPARE  
16 PROPOSALS.

17 (f) STATE THAT QUALITATIVE AND TECHNICAL PROPOSALS WILL BE  
18 EVALUATED AND SCORED BEFORE OPENING ANY PRICE OR FEE PROPOSALS.

19 (g) DESCRIBE THE BEST-VALUE SCORING METHOD. THE NUMBER OF POINTS  
20 ASSIGNED TO ANY PRICE OR FEE CRITERIA MAY NOT EXCEED TEN PERCENT OF THE  
21 TOTAL POINTS AND SHALL BE INCLUDED ONLY WHEN REQUIRED BY APPLICABLE  
22 FEDERAL LAW, RULES OR REGULATIONS OR FEDERAL FUNDING AGENCY GUIDANCE.

23 4. THE SELECTION COMMITTEE SHALL USE ONLY THE SCORING METHOD  
24 SPECIFIED IN THE REQUEST FOR PROPOSALS. ANY PRICE OR FEE PROPOSALS, WHEN  
25 REQUIRED, SHALL BE OPENED AND SCORED AFTER COMPLETION OF THE EVALUATION  
26 AND SCORING OF ALL QUALITATIVE AND TECHNICAL PROPOSALS.

27 5. THE AGENT SHALL AWARD THE CONTRACT TO THE RESPONSIVE AND  
28 RESPONSIBLE OFFEROR WHOSE PROPOSAL RECEIVES THE HIGHEST TOTAL SCORE. THE  
29 AGENT SHALL PROMPTLY NOTIFY THE WINNING OFFEROR AND SHALL SEND ACTUAL  
30 NOTICE TO EACH OTHER OFFEROR THAT THE OFFEROR HAS NOT WON OR THAT ANOTHER  
31 OFFEROR HAS WON.

32 6. THE CONTRACT FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS  
33 MADE, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED UNDER  
34 SUBSECTION H OF THIS SECTION.

35 7. THE AGENT MAY NOT PROCURE CONSTRUCTION-MANAGER-AT-RISK  
36 CONSTRUCTION SERVICES UNDER THIS SUBSECTION AFTER DECEMBER 31, 2030. FOR  
37 THE PURPOSES OF THIS PARAGRAPH, AN AGENT PROCURES  
38 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES UNDER THIS SUBSECTION  
39 WHEN THE CONTRACT IS EXECUTED BY THE AGENT AND THE CONTRACTOR. SERVICES  
40 UNDER A CONTRACT EXECUTED ON OR BEFORE DECEMBER 31, 2030 MAY BE RENDERED  
41 AFTER DECEMBER 31, 2030.

42 M. AN AGENT MAY PROCURE PROGRESSIVE DESIGN-BUILD CONSTRUCTION  
43 SERVICES UNDER THIS SECTION FOR ANY PUBLIC INFRASTRUCTURE PROJECT,  
44 INCLUDING VERTICAL AND HORIZONTAL CONSTRUCTION, SUBJECT TO THE  
45 REQUIREMENTS OF SUBSECTIONS C AND E OF THIS SECTION AND SECTION 34-605.

1 N. THE AGENT SHALL FOLLOW SUBSECTION C OF THIS SECTION TO ISSUE A  
2 REQUEST FOR QUALIFICATIONS AND DEVELOP A SINGLE FINAL LIST AND SHALL  
3 FOLLOW SUBSECTION E OF THIS SECTION TO NEGOTIATE A CONTRACT WITH THE MOST  
4 QUALIFIED PERSON OR FIRM ON THE FINAL LIST FOR PRECONSTRUCTION AND DESIGN  
5 SERVICES AND PROGRESSIVE DESIGN SERVICES. THE AGENT MAY NOT REQUEST OR  
6 CONSIDER PRICE DURING THE SELECTION PROCESS UNDER SUBSECTION C OF THIS  
7 SECTION.

8 O. THE AGENT MAY NOT REQUEST OR OBTAIN A FIXED PRICE OR GUARANTEED  
9 MAXIMUM PRICE FOR CONSTRUCTION AND MAY NOT COMMENCE CONSTRUCTION UNTIL  
10 AFTER ENTERING INTO THE WRITTEN CONTRACT FOR PRECONSTRUCTION AND DESIGN  
11 SERVICES AND A PRECONSTRUCTION SERVICES FEE, CONSISTENT WITH SECTION  
12 34-605, SUBSECTION B, AND UNTIL THE AGENT AND CONTRACTOR AGREE IN WRITING  
13 TO EITHER A FIXED PRICE OR A GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION AS  
14 PROVIDED IN SECTION 34-605, SUBSECTION C.

15 P. FOR ONLY FEDERALLY FUNDED PROJECTS, WHEN APPLICABLE FEDERAL LAW,  
16 RULES OR REGULATIONS OR FEDERAL FUNDING AGENCY GUIDANCE REQUIRES PRICE  
17 COMPETITION, THE AGENT MAY CONDUCT A ONE-STEP REQUEST FOR PROPOSALS  
18 BEST-VALUE COMPETITION AMONG THE PERSONS OR FIRMS ON THE FINAL LIST  
19 PURSUANT TO SUBSECTION C OF THIS SECTION, WITH OPTIONAL INTERVIEWS. THE  
20 REQUEST FOR PROPOSALS SHALL REQUIRE SEPARATE TECHNICAL AND PRICE OR FEE  
21 PROPOSALS, AND ANY PRICE OR FEE COMPONENT SHALL BE LIMITED TO THE  
22 DESIGN-BUILDER'S PRECONSTRUCTION SERVICES FEE, DESIGN SERVICES FEE,  
23 CONSTRUCTION MANAGEMENT FEE AND OTHER PRICING ELEMENTS EXPRESSLY ALLOWED  
24 BY APPLICABLE FEDERAL LAW, RULES OR REGULATION OR FEDERAL FUNDING AGENCY  
25 GUIDANCE AND MAY NOT INCLUDE CONSTRUCTION COSTS. THE NUMBER OF POINTS  
26 ASSIGNED TO ANY PRICE OR FEE CRITERIA MAY NOT EXCEED TEN PERCENT OF THE  
27 TOTAL NUMBER OF POINTS. THE SELECTION COMMITTEE SHALL EVALUATE AND SCORE  
28 TECHNICAL PROPOSALS BEFORE OPENING AND SCORING ANY PRICE OR FEE PROPOSALS.  
29 AWARDS SHALL BE MADE TO THE RESPONSIVE AND RESPONSIBLE OFFEROR WHOSE  
30 PROPOSAL RECEIVES THE HIGHEST TOTAL SCORE.

31 Q. SUBCONTRACTORS SHALL BE SELECTED BASED ON QUALIFICATIONS ALONE  
32 OR A COMBINATION OF QUALIFICATIONS AND PRICE AND NOT BASED ON PRICE ALONE,  
33 CONSISTENT WITH SUBSECTION C, PARAGRAPH 2, SUBDIVISION (e) OF THIS  
34 SECTION.

35 R. NOTWITHSTANDING SUBSECTION F, PARAGRAPH 11 OF THIS SECTION,  
36 STIPULATED FEES TO UNSUCCESSFUL OFFERORS MAY NOT BE PAID IN PROGRESSIVE  
37 DESIGN-BUILD PROCUREMENTS UNDER THIS SECTION.

38 S. AN AGENT MAY NOT PROCURE PROGRESSIVE DESIGN-BUILD CONSTRUCTION  
39 SERVICES PURSUANT TO THIS SUBSECTION AFTER DECEMBER 31, 2030. FOR THE  
40 PURPOSES OF THIS SUBSECTION, AN AGENT PROCURES PROGRESSIVE DESIGN-BUILD  
41 CONSTRUCTION SERVICES PURSUANT TO THIS SUBSECTION WHEN THE CONTRACT FOR  
42 PROGRESSIVE DESIGN-BUILD CONSTRUCTION SERVICES IS EXECUTED BY THE AGENT  
43 AND THE CONTRACTOR. IF A CONTRACT IS EXECUTED FOR PROGRESSIVE DESIGN-BUILD  
44 CONSTRUCTION SERVICES PROCURED PURSUANT TO THIS SUBSECTION ON OR BEFORE

1 DECEMBER 31, 2030, CONSTRUCTION SERVICES UNDER THE CONTRACT MAY BE  
2 RENDERED IN WHOLE OR IN PART AFTER DECEMBER 31, 2030.

3 ~~T.~~ T. For the purposes of this section: ~~;~~

4 1. "Professional services" includes architect services, engineer  
5 services, landscape architect services, assayer services, geologist  
6 services, ~~and~~ land surveying services, PROGRAM MANAGEMENT SERVICES,  
7 PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES, AND LAND AND  
8 RIGHT-OF-WAY ACQUISITION SERVICES, and any combination of those services.

9 2. "PROGRESSIVE DESIGN-BUILD" MEANS A PROJECT DELIVERY PROCESS IN  
10 WHICH ALL OF THE FOLLOWING APPLY:

11 (a) BOTH THE DESIGN AND CONSTRUCTION OF A PROJECT ARE PROCURED FROM  
12 A SINGLE ENTITY SELECTED THROUGH QUALIFICATIONS-BASED SELECTION AT THE  
13 EARLIEST FEASIBLE STAGE OF THE PROJECT.

14 (b) THE AGENT ENTERS INTO A CONTRACT FOR PRECONSTRUCTION AND DESIGN  
15 SERVICES.

16 (c) A FIXED PRICE OR GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION IS  
17 SUBSEQUENTLY NEGOTIATED AFTER SUFFICIENT DESIGN ADVANCEMENT.

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

20 34-605. Requirements applicable to construction services and  
21 professional services and to contracts for  
22 construction services and professional services;  
23 definition

24 A. The requirements prescribed in this section apply to each  
25 contract entered into as the result of a procurement under section 34-603,  
26 34-604 or 34-606 and to the professional services and construction  
27 services included in each procurement under section 34-603, 34-604 or  
28 34-606.

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

42 C. If a contract for construction services is entered into as the  
43 result of a procurement under section 34-603, 34-604 or 34-606,  
44 construction shall not commence until the agent and contractor agree in  
45 writing on either a fixed price that the agent will pay for the

1 construction to be commenced or a guaranteed maximum price for the  
2 construction to be commenced. The construction to be commenced may be the  
3 entire project or may be one or more phased parts of the project.

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

11 E. Notwithstanding any other law:

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

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

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

21 1. The maximum dollar amount of an individual job order shall be  
22 \$1,000,000 or such higher or lower amount prescribed by the agent in an  
23 action noticed pursuant to title 38, chapter 3, article 3.1 or a rule  
24 adopted by the agent as the maximum amount of an individual job order.  
25 Requirements shall not be artificially divided or fragmented in order to  
26 constitute a job order that satisfies this requirement.

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

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

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

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

40 (b) If not previously delivered to the subcontractor, the  
41 contractor has a duty to deliver promptly the following to each  
42 subcontractor invited to or that has agreed to do any of the work included  
43 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

1 services, design-build construction services or job-order-contracting  
2 construction services.

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

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

14 K. The following apply to all construction services procured under  
15 this chapter:

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

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

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

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

43 (i) If the agent included its subcontractor selection plan in the  
44 request for qualifications, the agent's subcontractor selection plan and  
45 the procedures to implement the agent's subcontractor selection plan

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

4 (ii) If the agent did not include its subcontractor selection plan  
5 in the request for qualifications, the subcontractor selection plan  
6 proposed by the selected person or firm in submitting its qualifications  
7 with those modifications as the agent and the selected person or firm  
8 agree.

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

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

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