

REFERENCE TITLE: state construction project delivery methods

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1054

Introduced by
Senator Carroll: Representative Cook

AN ACT

AMENDING SECTIONS 28-7363, 28-7366, 28-7367, 34-603 AND 34-605, ARIZONA
REVISED STATUTES; RELATING TO STATE CONSTRUCTION SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-7363, Arizona Revised Statutes, is amended to
3 read:

4 28-7363. Design-build method of project delivery

5 A. Notwithstanding any other law, the department may use the
6 design-build method of project delivery on a project if the department
7 makes a determination in writing that it is appropriate and in the best
8 interests of the department to use the design-build method of project
9 delivery for that project, except that:

10 1. The department shall not enter into a contract to operate any
11 structure, facility or other item pursuant to this article.

12 2. Each design-build project shall be a specific single project.

13 3. The department shall not commence any design-build project after
14 December 31, ~~2025~~ 2030. For the purposes of this paragraph, a project is
15 commenced on the date the department solicits the contract for the
16 project. If the department solicits a design-build contract on or before
17 December 31, ~~2025~~ 2030, the contract may be executed and services and
18 construction under the contract may be rendered in whole or in part after
19 December 31, ~~2025~~ 2030.

20 B. The estimated cost of the project shall not include the cost to
21 procure any right-of-way or other cost of condemnation. The cost to
22 procure any right-of-way or other cost of condemnation remains at all
23 times the responsibility of the department. The department shall obtain
24 all necessary rights-of-way.

25 C. The department is responsible for ~~preparation~~ PREPARING and
26 ~~acquisition of~~ ACQUIRING all environmental documents, including the scope
27 of any remediation and required clearances.

28 D. If construction of a design-build project involves railroad
29 facilities, the railroad shall approve the use of the design-build
30 delivery method before the department awards the design-build contract.

31 E. To ensure fair, uniform, clear and effective procedures that
32 will deliver a quality project on time and within budget, the director, in
33 conjunction with the appropriate and affected professionals and
34 contractors, may adopt procedures for procuring a project using the
35 design-build method of project delivery.

36 F. The provisions of sections 28-6923 and 28-6924 relating to bid,
37 performance and payment bonds and to change orders, progress payments,
38 contract retentions, definitions and authority to award contracts apply to
39 department design-build projects for transportation facilities pursuant to
40 this article.

1 Sec. 2. Section 28-7366, Arizona Revised Statutes, is amended to
2 read:
3 28-7366. Construction-manager-at-risk construction services
4 and job-order-contracting construction services
5 A. The department may procure the following services pursuant to
6 this section:
7 1. Construction-manager-at-risk construction services.
8 2. Job-order-contracting construction services.
9 B. The department shall provide notice of each procurement of
10 construction services prescribed in this section and shall award contracts
11 on the basis of demonstrated competence and qualifications for the type of
12 construction services pursuant to the procedures prescribed in this
13 section.
14 C. In the procurement of construction services pursuant to this
15 section:
16 1. The department shall issue a request for qualifications for each
17 contract and publish notice of the request for qualifications in the same
18 manner as provided in section 28-6923. The request for qualifications
19 shall:
20 (a) Include the number of persons or firms to be included on the
21 final list. At least three but not more than five persons or firms shall
22 be on the final list.
23 (b) State the criteria to be used by the selection team to select
24 the person or firm to perform the construction services. The request for
25 qualifications shall also state in a manner determined by the department
26 the relative weight of the selection criteria.
27 (c) If the department will hold interviews as part of the selection
28 process, state that interviews shall be held and the number of persons or
29 firms to be interviewed, which shall be at least the number of persons or
30 firms to be included in the final list but not more than the number of
31 persons or firms to be included in the final list plus two.
32 2. For each request for qualifications, the department shall
33 initiate a selection team pursuant to section 28-7365, subsection B. A
34 person who is a member of a selection team shall not be a contractor under
35 the contract or provide construction, construction services, materials or
36 services under the contract. The selection team shall:
37 (a) Evaluate the statements of qualifications and performance data
38 that are submitted in response to the department's request for
39 qualifications.
40 (b) If determined by the department and included by the department
41 in the request for qualifications, conduct interviews with the number of
42 persons or firms to be interviewed as stated in the request for
43 qualifications regarding the contract and the relative methods of approach
44 for furnishing the required construction services.

1 (c) After any interviews or if interviews are not held, in order of
2 preference, based on the criteria and the weighting of criteria
3 established and published by the department and included in the request
4 for qualifications, select a final list for the contract of persons or
5 firms the selection team deems to be the most qualified to provide the
6 construction services and, in the case of a contract that will be
7 negotiated under subsection E of this section, rank the persons or firms
8 on the final list in order of preference. The selection team shall base
9 the selection of the final list and the order of preference on
10 demonstrated competence and qualifications only. The number of persons or
11 firms on the final list shall be the number of persons or firms specified
12 in the request for qualifications, except that:

13 (i) If a smaller number of responsive and responsible persons or
14 firms respond to the solicitation, the department may have the selection
15 team proceed with the selection process, including interviews and the
16 final list, with the remaining persons or firms if at least two persons or
17 firms remain or the department may readvertise pursuant to this subsection
18 as the department deems necessary or appropriate.

19 (ii) If only one responsive and responsible person or firm responds
20 to a solicitation for a contract to be negotiated pursuant to subsection E
21 of this section, the department may proceed with only one person or firm
22 in the selection process and may award the contract to a single person or
23 firm if the department determines in writing that the fee negotiated
24 pursuant to subsection E of this section is fair and reasonable and that
25 either other prospective persons or firms had reasonable opportunity to
26 respond or there is not adequate time for a resolicitation.

27 (iii) If a person or firm on the final list withdraws or is removed
28 from the selection process and the selection team determines that it is in
29 the best interest of the department, the selection team may replace that
30 person or firm with the person or firm that submitted qualifications and
31 that is selected by the selection team as the next most qualified.

32 (d) Base the selection of the final list and order of preference on
33 the final list on demonstrated competence and qualifications only.

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

41 4. For construction-manager-at-risk construction services, the
42 contract under a request for qualifications solicitation is limited to a
43 specific single project.

1 D. The department shall award a contract for construction services
2 to one of the persons or firms on the final list prepared pursuant to
3 subsection C of this section as provided in subsection E or F of this
4 section, except that, if fewer than the number of persons or firms on the
5 final list respond to the request for proposals pursuant to subsection F
6 of this section but at least two persons or firms on the final list submit
7 responsive proposals, or if one or more of the persons or firms on the
8 final list drop out of the selection process pursuant to subsection E or F
9 of this section:

10 1. If there are three or more remaining persons or firms, the
11 department shall proceed with the selection process.

12 2. If there are only two remaining persons or firms, as the
13 department deems necessary and appropriate, the department may proceed
14 with the selection process with the two persons or firms or may terminate
15 the selection process and may readvertise pursuant to subsection C of this
16 section.

17 3. If there is only one remaining person or firm, the department
18 may award the contract to a single person or firm pursuant to subsection E
19 of this section if the department determines in writing that the fee
20 negotiated pursuant to subsection E of this section is fair and reasonable
21 and that either other prospective persons or firms had reasonable
22 opportunity to respond or there is not adequate time for a resolicitation.

23 E. For the single contract included in the request for
24 qualifications, the department shall enter into negotiations for the
25 contract with the highest qualified person or firm on the final list for
26 the construction services. The negotiations shall include consideration
27 of compensation and other contract terms that the department determines to
28 be fair and reasonable to the department. In making this decision, the
29 department shall take into account the estimated value, the scope, the
30 complexity and the nature of the construction services to be rendered. If
31 the department is not able to negotiate a satisfactory contract with the
32 highest qualified person or firm on the final list at compensation and on
33 other contract terms the department determines to be fair and reasonable,
34 the department shall formally terminate negotiations with that person or
35 firm. The department may undertake negotiations with the next most
36 qualified person or firm on the final list in sequence until an agreement
37 is reached or a determination is made to reject all persons or firms on
38 the final list. If a contract for construction services is entered into
39 pursuant to this subsection:

40 1. If the contract is for construction-manager-at-risk construction
41 services and includes preconstruction services by the contractor, the
42 department shall enter into a written contract with the contractor for
43 preconstruction services under which the department shall pay the
44 contractor a fee for preconstruction services in an amount agreed by the
45 department and the contractor, and the department shall not request or

1 obtain a fixed price or a guaranteed maximum price for the construction
2 from the contractor or enter into a construction contract with the
3 contractor until after the department has entered into the written
4 contract for preconstruction services and a preconstruction services fee.

5 2. Construction shall not commence until the department and
6 contractor agree in writing on either a fixed price that the department
7 will pay for the construction to be commenced or a guaranteed maximum
8 price for the construction to be commenced. The construction to be
9 commenced may be the entire project or may be one or more phased parts of
10 the project.

11 F. As an alternative to subsection E of this section, the
12 department may award job-order-contracting construction services as
13 follows:

14 1. The department shall use the selection team that is appointed
15 for the request for qualifications pursuant to subsection C of this
16 section.

17 2. The department shall issue a request for proposals to the
18 persons or firms on the final list that is developed pursuant to
19 subsection C of this section.

20 3. For job-order-contracting construction services, the request for
21 proposals shall include:

22 (a) The department's project schedule and project final design and
23 construction budget or life cycle budget for a procurement that includes
24 maintenance services or operations services.

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

28 (c) A description of the scoring method, including a list of the
29 factors in the scoring method and the number of points allocated to each
30 factor.

31 (d) A requirement that each offeror separately submit a technical
32 proposal and a price proposal and that the offeror's entire proposal be
33 responsive to the requirements in the request for proposals.

34 (e) A statement that in applying the scoring method the selection
35 team will separately evaluate the technical proposal and the price
36 proposal and will evaluate and score the technical proposal before opening
37 the price proposal.

38 (f) If the department conducts discussions pursuant to paragraph 5
39 of this subsection, a statement that discussions will be held and a
40 requirement that each offeror submit a preliminary technical proposal
41 before the discussions are held.

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

1 5. If determined by the department and included by the department
2 in the request for proposals, the selection team shall conduct discussions
3 with all offerors that submit preliminary technical proposals.
4 Discussions shall be for the purpose of clarification to ensure full
5 understanding of, and responsiveness to, the solicitation requirements.
6 The department shall accord fair treatment to offerors with respect to any
7 opportunity for discussion and for clarification by the owner. Revision
8 of preliminary technical proposals shall be ~~permitted~~ ALLOWED after
9 submission of preliminary technical proposals and before award for the
10 purpose of obtaining the best and final proposals. In conducting any
11 discussions, information derived from proposals submitted by competing
12 offerors shall not be disclosed to other competing offerors.

13 6. After ~~completion of~~ any discussions pursuant to paragraph 5 of
14 this subsection ARE COMPLETED or if ~~no~~ discussions are NOT held, each
15 offeror shall separately submit the offeror's final technical proposal and
16 the offeror's price proposal.

17 7. Before opening any price proposal, the selection team shall open
18 the final technical proposals, evaluate the final technical proposals and
19 score the final technical proposals using the scoring method in the
20 request for proposals. No other factors or criteria may be used in the
21 evaluation and scoring.

22 8. After ~~completion of~~ the evaluation and scoring of all final
23 technical proposals ARE COMPLETED, the selection team shall open the price
24 proposals, evaluate the price proposals, score the price proposals and
25 complete the scoring of the entire proposals using the scoring method in
26 the request for proposals. No other factors or criteria may be used in
27 the evaluation and scoring.

28 9. The department shall award the contract to the responsive and
29 responsible offeror whose proposal receives the highest score under the
30 method of scoring in the request for proposals. No other factors or
31 criteria may be used in the evaluation.

32 10. The contract file shall contain the basis on which the award is
33 made.

34 G. Until an award and execution of a contract by the department,
35 only the name of each person or firm on the final list developed pursuant
36 to subsection C of this section may be made available to the public. All
37 other information received by the department in response to the request
38 for qualifications or contained in the proposals is confidential in order
39 to avoid disclosure of the contents that may be prejudicial to competing
40 offerors during the selection process. The department shall open the
41 proposals to public inspection after the contract is awarded and the
42 department has executed the contract. To the extent that the offeror
43 designates and the department concurs, trade secrets and other proprietary
44 data contained in a proposal remain confidential.

1 H. The department may cancel a request for qualifications or a
2 request for proposals or reject in whole or in part any or all proposals
3 as specified in the solicitation if it is in the best interest of the
4 department. The department shall make the reasons for cancellation or
5 rejection part of the contract file.

6 I. Notwithstanding any other law:

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

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

14 3. For each project under a construction-manager-at-risk
15 construction services contract, the licensed contractor performing the
16 contract shall perform, with the contractor's own organization,
17 construction work that amounts to ~~not less than~~ AT LEAST forty ~~per cent~~
18 PERCENT of the total contract price for construction. For the purposes of
19 this paragraph, the total contract price for construction does not include
20 the cost of preconstruction services, design services or any other related
21 services or the cost to procure any right-of-way or other cost of
22 condemnation.

23 4. Each procurement and each request for qualifications pursuant to
24 this section is limited to a single contract for
25 construction-manager-at-risk construction services or
26 job-order-contracting construction services. This restriction does not
27 affect or impair the department's ability to procure multiple contracts
28 for job-order-contracting construction services in a single procurement
29 using a single request for qualifications pursuant to section 28-7367.

30 5. The department shall not procure any construction services
31 using the construction-manager-at-risk construction services or
32 job-order-contracting construction services method of project delivery
33 after December 31, ~~2025~~ 2030. For the purposes of this paragraph, the
34 department procures construction services when the department solicits the
35 contract for construction services. If the department solicits a contract
36 for construction services on or before December 31, ~~2025~~ 2030, the
37 contract may be executed and construction services under the contract may
38 be rendered in whole or in part after December 31, ~~2025~~ 2030.

39 J. For job-order-contracting construction services only:

40 1. The maximum dollar amount of an individual job order shall be
41 ~~one million dollars~~ \$1,000,000 or such higher or lower amount prescribed
42 by the department. Requirements shall not be artificially divided or
43 fragmented in order to constitute a job order that satisfies this
44 requirement.

1 2. If the contractor subcontracts or intends to subcontract any of
2 the work under a job order and if the job-order-construction services
3 contract includes descriptions of standard individual tasks, standard unit
4 prices for standard individual tasks and pricing of job orders based on
5 the number of units of standard individual tasks in the job order:

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

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

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

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

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

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

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

26 K. Notwithstanding anything to the contrary in this title, the
27 department shall not enter into a contract as contractor to provide
28 construction-manager-at-risk construction services or
29 job-order-contracting construction services.

30 L. Each contract for construction-manager-at-risk construction
31 services or job-order-contracting construction services shall contain a
32 description of each separate location at which the construction will be
33 performed and a requirement that the contractor include in each of the
34 contractor subcontracts the same location description. The contractor
35 shall include in each subcontract a description of each separate location
36 at which the construction will be performed.

37 M. Except as otherwise provided in this section, sections 28-6923
38 and 28-6924, relating to bid, performance and payment bonds, change
39 orders, progress payments, contract retention, definitions and authority
40 to award contracts, apply to department construction-manager-at-risk and
41 job-order-contracting contracts for transportation facilities pursuant to
42 this article.

1 Sec. 3. Section 28-7367, Arizona Revised Statutes, is amended to
2 read:

3 28-7367. Multiple contracts for the same
4 job-order-contracting construction services to be
5 awarded to separate persons or firms in a single
6 procurement; contract requirements

7 A. The department may procure in a single procurement multiple
8 contracts for the same job-order-contracting construction services to be
9 awarded to separate persons or firms pursuant to this section.

10 B. The department shall provide notice of each procurement of
11 multiple contracts for the same job-order-contracting construction
12 services to be awarded to separate persons or firms prescribed in this
13 section and shall award contracts on the basis of demonstrated competence
14 and qualifications for the type of job-order-contracting construction
15 services pursuant to the procedures prescribed in this section.

16 C. In the procurement of multiple contracts for the same
17 job-order-contracting construction services to be awarded to separate
18 persons or firms pursuant to this section:

19 1. The department shall issue a request for qualifications for each
20 procurement and publish notice of the request for qualifications in the
21 same manner as provided in section 28-6923. The request for
22 qualifications shall:

23 (a) State that multiple contracts for the same
24 job-order-contracting construction services may or will be awarded, the
25 number of contracts that may or will be awarded, the services to be
26 performed under each of the multiple contracts and that each of the
27 multiple contracts will be awarded to a separate person or firm.

28 (b) Include the number of persons or firms to be included on the
29 final list. The number on the final list shall be the number of contracts
30 that may or will be awarded plus a number that is determined by the
31 department and that is not more than five.

32 (c) State the criteria to be used by the selection team to select
33 the persons or firms to perform the job-order-contracting construction
34 services. The request for qualifications shall also state in a manner
35 determined by the department the relative weight of the selection
36 criteria.

37 (d) If the department will hold interviews as part of the selection
38 process, state that interviews shall be held with a number of persons or
39 firms equal to the number of contracts that may or will be awarded plus a
40 number that is determined by the department and that is not more than
41 five.

42 2. For each request for qualifications, the department shall
43 initiate a selection team pursuant to section 28-7365, subsection B. A
44 person who is a member of a selection team shall not be a contractor under

1 the contract or provide construction, construction services, materials or
2 services under the contract. The selection team shall:

3 (a) Evaluate the statements of qualifications and performance data
4 that are submitted in response to the department's request for
5 qualifications.

6 (b) If determined by the department and included by the department
7 in the request for qualifications, conduct interviews with the number of
8 persons or firms to be interviewed as stated in the request for
9 qualifications regarding the contract and the relative methods of approach
10 for furnishing the required construction services.

11 (c) After any interviews or if interviews are not held, in order of
12 preference, based on the criteria and the weighting of criteria
13 established and published by the department and included in the request
14 for qualifications, select the final list of persons or firms the
15 selection team deems to be the most qualified to provide the construction
16 services and, in the case of a contract that will be negotiated under
17 subsection E of this section, rank the persons or firms on the final list
18 in order of preference. The selection team shall base the selection of the
19 final list and the order of preference only on demonstrated competence and
20 qualifications. The number of persons or firms on the final list shall be
21 the number of persons or firms specified in the request for
22 qualifications, except that:

23 (i) If a smaller number of responsive and responsible persons or
24 firms respond to the solicitation, the department may have the selection
25 team proceed with the selection process, including interviews and the
26 final list, with the remaining persons or firms if at least two persons or
27 firms remain or the department may readvertise pursuant to this subsection
28 as the department deems necessary or appropriate.

29 (ii) If only one responsive and responsible person or firm responds
30 to a solicitation for a contract to be negotiated pursuant to subsection E
31 of this section, the department may proceed with only one person or firm
32 in the selection process and may award the contract to a single person or
33 firm if the department determines in writing that the fee negotiated
34 pursuant to subsection E of this section is fair and reasonable and that
35 either other prospective persons or firms had reasonable opportunity to
36 respond or there is not adequate time for a resolicitation.

37 (iii) If a person or firm on the final list withdraws or is removed
38 from the selection process and the selection team determines that it is in
39 the best interest of the department, the selection team may replace that
40 person or firm with the person or firm that submitted qualifications and
41 that is selected by the selection team as the next most qualified.

42 (d) Base the selection of the final list and order of preference on
43 the final list only on demonstrated competence and qualifications.

44 3. The department and the selection team shall not request or
45 consider fees, price, man-hours or any other cost information at any point

1 in the selection process under this subsection or subsection D of this
2 section, including the selection of the persons or firms to be
3 interviewed, the selection of the persons or firms to be on the final
4 list, in determining the order of preference of persons or firms on the
5 final list or for any other purpose in the selection process.

6 D. The department shall award the multiple contracts for
7 job-order-contracting construction services to the separate persons or
8 firms on the final list prepared pursuant to subsection C of this section
9 as provided in subsection E or F of this section, except that, if fewer
10 than the number of persons or firms on the final list respond to the
11 request for proposals pursuant to subsection F of this section but at
12 least two persons or firms on the final list submit responsive proposals,
13 or if one or more of the persons or firms on the final list drop out of
14 the selection process pursuant to subsection E or F of this section:

15 1. If there are three or more remaining persons or firms, the
16 department shall proceed with the selection process.

17 2. If there are only two remaining persons or firms, as the
18 department deems necessary and appropriate, the department may proceed
19 with the selection process with the two persons or firms or may terminate
20 the selection process and may readvertise pursuant to subsection C of this
21 section.

22 3. If there is only one remaining person or firm, the department
23 may award one of the multiple contracts to the single person or firm
24 pursuant to subsection E of this section if the department determines in
25 writing that the fee negotiated pursuant to subsection E of this section
26 is fair and reasonable and that either other prospective persons or firms
27 had a reasonable opportunity to respond or there is not adequate time for
28 a resolicitation.

29 E. For multiple contracts for the same job-order-contracting
30 construction services included in the request for qualifications, the
31 department shall enter into negotiations with the number of the highest
32 qualified persons or firms on the final list equal to the number of
33 contracts that may or will be awarded. The negotiations shall include
34 consideration of compensation and other contract terms that the department
35 determines to be fair and reasonable to the department. In making this
36 decision, the department shall take into account the estimated value, the
37 scope, the complexity and the nature of the construction services to be
38 rendered. If the department is not able to negotiate a satisfactory
39 contract with a person or firm with whom the department has commenced
40 negotiations at compensation and on other contract terms the department
41 determines to be fair and reasonable, the department shall formally
42 terminate negotiations with that person or firm. The department may
43 undertake negotiations with the next most qualified person or firm on the
44 final list with whom the department is not then negotiating and with whom
45 the department has not previously negotiated in sequence until an

1 agreement is reached or a determination is made to reject all persons or
2 firms on the final list. As to each contract for job-order-contracting
3 construction services entered into pursuant to this subsection,
4 construction shall not commence until the department and the contractor
5 agree in writing on either a fixed price that the department will pay for
6 the construction to be commenced or a guaranteed maximum price for the
7 construction to be commenced.

8 F. As an alternative to subsection E of this section, the
9 department may award multiple contracts for the same job-order-contracting
10 construction services as follows:

11 1. The department shall use the selection team that is appointed
12 for the request for qualifications pursuant to subsection C of this
13 section.

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

17 3. The request for proposals shall include:

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

21 (b) A statement that the contract will be awarded to the offerors
22 whose proposals receive the highest number of points under a scoring
23 method.

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

27 (d) A requirement that each offeror separately submit a technical
28 proposal and a price proposal and that the offeror's entire proposal be
29 responsive to the requirements in the request for proposals.

30 (e) A statement that in applying the scoring method the selection
31 team will separately evaluate the technical proposal and the price
32 proposal and will evaluate and score the technical proposal before opening
33 the price proposal.

34 (f) If the department conducts discussions pursuant to paragraph 5
35 of this subsection, a statement that discussions will be held and a
36 requirement that each offeror submit a preliminary technical proposal
37 before the discussions are held.

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

41 5. If determined by the department and included by the department
42 in the request for proposals, the selection team shall conduct discussions
43 with all offerors that submit preliminary technical proposals.
44 Discussions shall be for the purpose of clarification to ensure full
45 understanding of, and responsiveness to, the solicitation

1 requirements. The department shall accord fair treatment to offerors with
2 respect to any opportunity for discussion and for clarification by the
3 owner. Revision of preliminary technical proposals shall be ~~permitted~~
4 **ALLOWED** after submission of preliminary technical proposals and before the
5 award for the purpose of obtaining the best and final proposals. In
6 conducting any discussions, information derived from proposals submitted
7 by competing offerors shall not be disclosed to other competing offerors.

8 6. After ~~completion of~~ any discussions pursuant to paragraph 5 of
9 this subsection **ARE COMPLETED** or if ~~no~~ discussions are **NOT** held, each
10 offeror shall separately submit the offeror's final technical proposal and
11 the offeror's price proposal.

12 7. Before opening any price proposal, the selection team shall open
13 the final technical proposals, evaluate the final technical proposals and
14 score the final technical proposals using the scoring method in the
15 request for proposals. No other factors or criteria may be used in the
16 evaluation and scoring.

17 8. After ~~completion of~~ the evaluation and scoring of all final
18 technical proposals **ARE COMPLETED**, the selection team shall open the price
19 proposals, evaluate the price proposals, score the price proposals and
20 complete the scoring of the entire proposals using the scoring method in
21 the request for proposals. No other factors or criteria may be used in
22 the evaluation and scoring.

23 9. The department shall award the multiple contracts for
24 job-order-contracting construction services to the responsive and
25 responsible offerors whose proposals receive the highest scores under the
26 method of scoring in the request for proposals. No other factors or
27 criteria may be used in the evaluation.

28 10. The contract file shall contain the basis on which the award is
29 made.

30 G. Until an award and execution of all of the multiple contracts by
31 the department, only the name of each person or firm on the final list
32 developed pursuant to subsection C of this section may be made available
33 to the public. All other information received by the department in
34 response to the request for qualifications or contained in the proposals
35 is confidential in order to avoid disclosure of the contents that may be
36 prejudicial to competing offerors during the selection process. The
37 department shall open the proposals to public inspection after the
38 contract is awarded and the department has executed all of the multiple
39 contracts. To the extent that the offeror designates and the department
40 concurs, trade secrets and other proprietary data contained in a proposal
41 remain confidential.

42 H. The department may cancel a request for qualifications or a
43 request for proposals or reject in whole or in part any or all proposals
44 as specified in the solicitation if it is in the best interest of the

1 department. The department shall make the reasons for cancellation or
2 rejection part of the contract file.

3 I. Notwithstanding any other law:

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

8 2. The contractor for job-order-contracting construction services
9 shall be licensed to perform construction pursuant to title 32,
10 chapter 10.

11 3. The department shall not procure any construction services using
12 the job-order-contracting construction services method of project delivery
13 under this section after December 31, ~~2025~~ 2030. For the purposes of this
14 paragraph, the department procures construction services if the department
15 solicits the contract for construction services. If the department
16 solicits a contract for construction services on or before December 31,
17 ~~2025~~ 2030, the contract may be executed and construction services under
18 the contract may be rendered in whole or in part after December 31, ~~2025~~
19 2030.

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

21 1. The maximum dollar amount of an individual job order shall be
22 one million dollars or the higher or lower amount prescribed by the
23 department. Requirements shall not be artificially divided or fragmented
24 in order to constitute a job order that satisfies this requirement.

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

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

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

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

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

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

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

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

7 K. Each contract for job-order-contracting construction services
8 shall contain a description of each separate location at which the
9 construction will be performed and a requirement that the contractor
10 include in each of the contractor subcontracts the same location
11 description. The contractor shall include in each subcontract a
12 description of each separate location at which the construction will be
13 performed.

14 L. Except as otherwise provided in this section, sections 28-6923
15 and 28-6924, relating to bid, performance and payment bonds, change
16 orders, progress payments, contract retention, definitions and authority
17 to award contracts, apply to department job-order-contracting contracts
18 for transportation facilities pursuant to this section.

19 Sec. 4. Section 34-603, Arizona Revised Statutes, is amended to
20 read:

21 34-603. Procurement of professional services and
22 construction-manager-at-risk, design-build and
23 job-order-contracting construction services;
24 definition

25 A. Except for services that are under a single contract and that an
26 agent procures pursuant to section 34-103 or 34-606, an agent shall
27 procure a single contract for the following services pursuant to this
28 section:

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

38 B. An agent shall provide notice of each procurement of
39 professional services or construction services specified in this section
40 and shall award the single contract on the basis of demonstrated
41 competence and qualifications for the type of professional services or
42 construction services pursuant to the procedures prescribed in this
43 section.

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

3 1. The following requirements apply:

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

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

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

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

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

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

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

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

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

43 (e) If the agent enters into the first contract for preconstruction
44 services, construction services or professional services as the result of
45 the procurement, the procurement under this section ends. After execution

1 of that first contract the agent may not use the procurement or the
2 existing final list in the procurement as the basis for entering into a
3 contract with any other person or firm that participated in the
4 procurement.

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

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

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

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

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

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

43 (b) In a procurement of a contract to be negotiated under
44 subsection E of this section, state that there will be a single final list
45 of at least three and not more than five persons or firms. In a

1 procurement in which the contract will be awarded under subsection F of
2 this section, the request for qualifications shall state that there will
3 be a single final list and that the number of persons or firms on the
4 final list will be three.

5 (c) As prescribed below, state the selection criteria and relative
6 weight of the selection criteria to be used by the selection committee,
7 except that for construction services one of the criteria shall be the
8 person's or firm's subcontractor selection plan or procedures to implement
9 the agent's subcontractor selection plan. All selection criteria under
10 this subsection shall be factors that demonstrate competence and
11 qualifications for the type of professional services or construction
12 services included in the procurement. If:

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

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

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

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

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

40 (ii) A subcontractor selection plan adopted by the agent that
41 applies to the person or firm that is selected to perform the construction
42 services and that requires subcontractors to be selected based on
43 qualifications alone or on a combination of qualifications and price and
44 not based on price alone and a requirement that each person or firm must

1 submit a description of the procedures it proposes to use to implement the
2 agent's subcontractor selection plan.

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

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

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

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

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

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

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

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

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

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

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

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

37 (i) If interviews were held, the other persons and firms
38 interviewed.

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

41 (d) If the contract will be awarded under subsection F of this
42 section, before or at the same time as the agent notifies the persons or
43 firms on the final list that they are on the final list, the agent shall
44 send actual notice to each of the following persons or firms that they are

1 not on the final list or that other persons or firms are on the final
2 list:

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

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

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

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

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

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

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

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

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

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

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

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

43 3. The request for proposals shall include:

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

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

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

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

12 (ii) Offeror qualifications.

13 (iii) Offeror financial capacity.

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

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

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

27 (vii) An offeror quality management plan.

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

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

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

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

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

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

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

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

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

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

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

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

40 11. For design-build construction services only, the agent shall
41 award a stipulated fee equal to a percentage, as prescribed in the request
42 for proposals, of the agent's project final budget for design and
43 construction, as prescribed in the request for proposals, but at least
44 four-tenths of one percent of the project final budget for design and
45 construction to each final list offeror who provides a responsive, but

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

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

19 1. For each request for qualifications procurement process under
20 subsection C or subsection K, paragraph 2 of this section:

21 (a) If interviews were not held:

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

25 (ii) The final list.

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

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

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

40 (b) If interviews were held:

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

44 (ii) The final list.

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

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

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

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

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

22 (viii) 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 in the selection of the
26 persons or firms to be on the short list to be interviewed. At the
27 election of the agent, this documentation may be in the form of a
28 consolidated scoring sheet for the entire selection committee, in the form
29 of individual scoring sheets for the individual selection committee
30 members or any other form as determined by the agent.

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

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

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

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

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

1 documentation may be in the form of a consolidated scoring sheet for the
2 entire selection committee, in the form of individual scoring sheets for
3 individual selection committee members or in any other form as determined
4 by the agent.

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

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

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

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

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

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

42 I. An agent may cancel a request for qualifications or a request
43 for proposals, reject in whole or in part any or all submittals or
44 proposals, or determine not to enter into a contract as specified in the
45 solicitation if the agent determines in the agent's absolute and sole

1 discretion that the action is in the best interest of the agent. The
2 agent shall make the reasons for cancellation, rejection or determination
3 not to enter into a contract part of the contract file.

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

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

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

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

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

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

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

3 (c) The request for proposals shall include:

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

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

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

12 (iv) The required contents of the qualitative and technical
13 proposals and the price proposals.

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

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

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

23 (viii) A description of the scoring method. The scoring method
24 shall be a best-value method in which the agent establishes criteria to
25 score the qualitative and technical proposal and separate criteria to
26 score the price proposal and the number of points assigned to each
27 criteria. The number of points assigned to price criteria shall not
28 exceed ten percent of the total number of points in the scoring method.

29 (ix) If the agent elects to conduct discussions pursuant to
30 subdivision (e) of this paragraph, a statement that discussions will be
31 held and a requirement that each offeror submit a preliminary qualitative
32 and technical proposal before the discussions are held.

33 (d) If the agent determines to conduct discussions pursuant to
34 subdivision (e) of this paragraph, each offeror shall submit a preliminary
35 qualitative and technical proposal to the agent before those discussions
36 are held.

37 (e) If determined by the agent and included by the agent in the
38 request for proposals, the selection committee shall conduct discussions
39 with all offerors solely about their preliminary qualitative and technical
40 proposals. Discussions shall be for the purpose of clarification to
41 ensure full understanding of, and responsiveness to, the solicitation
42 requirements, other than price. Offerors shall be accorded fair treatment
43 with respect to any opportunity for discussion and for clarification by
44 the selection committee. Revision of preliminary qualitative and
45 technical proposals shall be permitted after submission of preliminary

1 qualitative and technical proposals and before scoring of proposals for
2 the purpose of obtaining best and final proposals. In conducting any
3 discussions, information derived from the preliminary qualitative and
4 technical proposals submitted by competing offerors shall not be disclosed
5 to other competing offerors. Price shall not be part of the discussions.

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

10 (g) In evaluating and scoring the offerors' proposals the selection
11 committee shall use the scoring method specified in the request for
12 proposals.

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

19 (i) After completion of the evaluation and scoring of all final
20 qualitative and technical proposals, the selection committee shall open
21 the price proposals and score the price proposals using the price criteria
22 and assigned points in the scoring method in the request for proposals.
23 No other factors or criteria may be used in the evaluation and scoring.

24 (j) After evaluating and scoring the price proposals, the selection
25 committee shall add the qualitative and technical proposal score and the
26 price proposal score of each offeror together for a total score. The
27 responsive and responsible offeror with the highest total score is the
28 winning offeror.

29 (k) The agent shall promptly notify the winning offeror that it is
30 the winner. Before or at the same time as the agent notifies the winning
31 offeror that it is the winner, the agent shall send actual notice to each
32 other offeror either that the offeror is not the winner or that another
33 offeror is the winner.

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

37 4. Notwithstanding this subsection, an agent shall not procure any
38 construction-manager-at-risk construction services for horizontal
39 construction pursuant to this subsection after ~~June 30, 2025~~ **DECEMBER 31,**
40 **2030**. For the purposes of this paragraph, an agent procures
41 construction-manager-at-risk construction services for horizontal
42 construction pursuant to this subsection when the contract for the
43 construction-manager-at-risk construction services for horizontal
44 construction is executed by the agent and the contractor. If a contract
45 is executed for construction-manager-at-risk construction services for

1 horizontal construction procured pursuant to this subsection on or before
2 ~~June 30, 2025~~ DECEMBER 31, 2030, construction services under the contract
3 may be rendered in whole or in part after ~~June 30, 2025~~ DECEMBER 31, 2030.

4 L. For the purposes of this section, "professional services"
5 includes architect services, engineer services, landscape architect
6 services, assayer services, geologist services and land surveying services
7 and any combination of those services.

8 Sec. 5. Section 34-605, Arizona Revised Statutes, is amended to
9 read:

10 34-605. Requirements applicable to construction services and
11 professional services and to contracts for
12 construction services and professional services;
13 definition

14 A. The requirements prescribed in this section apply to each
15 contract entered into as the result of a procurement under section 34-603,
16 34-604 or 34-606 and to the professional services and construction
17 services included in each procurement under section 34-603, 34-604 or
18 34-606.

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

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

39 D. A contract for professional services entered into as the result
40 of a procurement under section 34-603, 34-604 or 34-606 shall have a term
41 not exceeding five years after the date of contract award by the agent of
42 the first contract under the procurement, except that the contract may
43 continue in effect after the ~~five year~~ FIVE-YEAR term for professional
44 services on projects on which the rendering of professional services
45 commences within the ~~five year~~ FIVE-YEAR term.

1 E. Notwithstanding any other law:

2 1. The contractor for design-build or job-order-contracting
3 construction services is not required to be registered to perform design
4 services pursuant to title 32, chapter 1 if the person or firm actually
5 performing the design services on behalf of the contractor is
6 appropriately registered.

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

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

11 1. The maximum dollar amount of an individual job order shall be
12 ~~one million dollars~~ \$1,000,000 or such higher or lower amount prescribed
13 by the agent in an action noticed pursuant to title 38, chapter 3, article
14 3.1 or a rule adopted by the agent as the maximum amount of an individual
15 job order. Requirements shall not be artificially divided or fragmented
16 in order to constitute a job order that satisfies this requirement.

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

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

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

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

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

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

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

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

43 G. The following apply to horizontal construction:

44 1. Notwithstanding this chapter, an agent shall not procure any
45 horizontal construction using the construction-manager-at-risk,

1 design-build or job-order-contracting method of project delivery after
2 ~~June 30, 2025~~ DECEMBER 31, 2030. For purposes of this paragraph, an agent
3 procures horizontal construction when the contract for the construction
4 services is executed by the agent and the contractor for the
5 construction-manager-at-risk, design-build or job-order-contracting
6 construction services. If a contract is executed for construction
7 services on or before ~~June 30, 2025~~ DECEMBER 31, 2030, construction
8 services under the contract may be rendered in whole or in part after
9 ~~June 30, 2025~~ DECEMBER 31, 2030.

10 2. For each horizontal construction project under a design-build or
11 construction-manager-at-risk construction services contract, the licensed
12 contractor performing the contract shall perform, with the contractor's
13 own organization, construction work that amounts to not less than
14 forty-five percent of the total contract price for the construction,
15 except that for light rail the self-performance percentage shall be not
16 less than thirty percent.

17 3. A project is horizontal construction if more than one-half of
18 the total contract price for the construction is for horizontal
19 construction. Project elements shall not be artificially added in order
20 to make a project not horizontal construction and shall not be
21 artificially deleted in order to make a project horizontal construction.

22 4. The total contract price for the construction does not include
23 the cost of preconstruction services, design services or any other related
24 services or the cost to procure any right-of-way or other cost of
25 condemnation.

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

28 1. Enter into a contract as contractor to provide
29 construction-manager-at-risk construction services, design-build
30 construction services or job-order-contracting construction services.

31 2. Contract with itself, with another agent, with this state or
32 with any other governmental unit of this state or the federal government
33 for the agent to provide construction-manager-at-risk construction
34 services, design-build construction services or job-order-contracting
35 construction services.

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

39 J. The agent shall include in each contract for construction
40 services the full street or physical address of each separate location at
41 which the construction will be performed and a requirement that the
42 contractor and each subcontractor at any level include in each of its
43 subcontracts the same address information. The contractor and each
44 subcontractor at any level shall include in each subcontract the full

1 street or physical address of each separate location at which construction
2 work will be performed.

3 K. The following ~~provisions~~ apply to all construction services
4 procured under this chapter:

5 1. The contractor performing the construction services is permitted
6 to self-perform part of the construction work if and to the extent agreed
7 in writing by the agent and the contractor. The agent may use methods
8 other than competitive bidding to assure itself that the price the agent
9 pays to the contractor for self-performed work is fair and reasonable.
10 ~~Permitted~~ ALLOWABLE methods to evaluate fairness and reasonableness of the
11 price of self-performed work include ~~evaluation of~~ EVALUATING the
12 contractor's proposed scope of work and price for self-performed work by
13 an estimator who is hired and paid by the agent, who is independent of the
14 contractor and who may be an employee of the agent. Although the agent
15 may elect to so require, ~~nothing in~~ this chapter, this title or any other
16 law shall NOT be construed or interpreted to require the agent to require
17 a contractor desiring to self-perform part of the construction work to
18 competitively bid that part of the construction work against other
19 contractors in a bid competition.

20 2. The following requirements apply to the construction work to be
21 performed by subcontractors and do not apply to construction work that the
22 agent and the contractor agree in writing will be self-performed by the
23 contractor:

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

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

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

39 (ii) If the agent did not include its subcontractor selection plan
40 in the request for qualifications, the subcontractor selection plan
41 proposed by the selected person or firm in submitting its qualifications
42 with those modifications as the agent and the selected person or firm
43 agree.

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

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

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