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“State Government Procurement”

Title 41 State Government

Chapter 23 Arizona State Procurement Code

Article 1 – General Provisions

41-2503. Definitions

In this chapter, unless the context otherwise requires:

1. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.
2. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.
3. "Change order" means a written order that is signed by a procurement officer and that directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.
4. "Construction":
 - (a) Means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property.
 - (b) Does not include:
 - (i) The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
 - (ii) The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.
5. "Construction-manager-at-risk" means a project delivery method in which:
 - (a) There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the purchasing agency may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
 - (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

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

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

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

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

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

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

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

7. "Contract" means all types of state agreements, regardless of what they may be called, for the procurement of materials, services, construction, construction services or the disposal of materials.

8. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.

9. "Contractor" means any person who has a contract with a state governmental unit.

10. "Data" means documented information, regardless of form or characteristic.

11. "Department" means the department of administration.

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

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

(b) The first contract is for design services.

(c) The second contract is for construction.

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

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

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

(a) There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the purchasing agency may elect separate contracts

for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.

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

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

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

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

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

15. "Design requirements":

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

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

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

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

(b) May include:

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

(ii) Additional design information or documents that the purchasing agency elects to include.

16. "Design services" means architect services, engineer services or landscape architect services.

17. "Designee" means a duly authorized representative of the director.

18. "Director" means the director of the department of administration.

19. "Employee" means an individual drawing a salary from a state governmental unit, whether elected or not, and any noncompensated individual performing personal services for any state governmental unit.

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

21. "Finance services" means financing for a construction services project.
22. "General services administration contract" means contracts awarded by the United States government general services administration.
23. "Grant" means the furnishing of financial or other assistance, including state funds or federal grant funds, by any state governmental unit to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.
24. "Job-order-contracting" means a project delivery method in which:
- (a) The contract is a requirements contract for indefinite quantities of construction.
 - (b) The construction to be performed is specified in job orders issued during the contract.
 - (c) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.
25. "Landscape architect services" means those professional landscape architect services that are within the scope of landscape architectural practice as provided in title 32, chapter 1.
26. "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.
27. "Materials":
- (a) Means all property, including equipment, supplies, printing, insurance and leases of property.
 - (b) Does not include land, a permanent interest in land or real property or leasing space.
28. "Operations services" means routine operation of existing facilities, structures, buildings or real property.
29. "Owner" means a state purchasing agency or state governmental unit.
30. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.
31. "Preconstruction services" means services and other activities during the design phase.
32. "Procurement":
- (a) Means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services.
 - (b) Includes all functions that pertain to obtaining any materials, services, construction or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
33. "Procurement officer":

(a) Means any person duly authorized to enter into and administer contracts and make written determinations with respect to the contracts.

(b) Includes an authorized representative acting within the limits of the authorized representative's authority.

34. "Purchasing agency" means any state governmental unit that is authorized by this chapter or rules adopted pursuant to this chapter, or by way of delegation from the director, to enter into contracts.

35. "Services":

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

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

36. "Significant procurement role":

(a) Means any role that includes any of the following duties:

(i) Participating in the development of a procurement.

(ii) Participating in the development of an evaluation tool.

(iii) Approving a procurement or an evaluation tool.

(iv) Soliciting quotes greater than ten thousand dollars for the provision of materials, services or construction.

(v) Serving as a technical advisor or an evaluator who evaluates a procurement.

(vi) Recommending or selecting a vendor that will provide materials, services or construction to this state.

(vii) Serving as a decision maker or designee on a protest or an appeal by a party regarding an agency procurement selection or decision.

(b) Does not include making decisions on developing specifications and the scope of work for a procurement if the decision is based on the application of commonly accepted industry standards or known published standards of the agency as applied to the project, services, goods or materials.

37. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state.

38. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with a state governmental unit.

39. "Using agency" means any state governmental unit that uses any materials, services or construction procured under this chapter.

Article 5 – Procurement of Construction and Specified Professional Services

41-2571. Definitions

As used in this article:

1. "Architect services", "engineer services", "land surveying services", "assayer services", "geologist services" and "landscape architect services" means those professional services within the scope of the practice of those services as provided in title 32, chapter 1, article 1.

2. "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

41-2578. Procurement of specified professional and construction services; definition

A. Except as authorized by sections 41-2535, 41-2536, 41-2537 and 41-2581, a single contract for architect services, assayer services, construction-manager-at-risk construction services, design-build construction services, engineer services, job-order-contracting construction services, geologist services, landscape architect services and land surveying services shall be procured as provided in this section.

B. This state shall provide notice, in accordance with rules, of each procurement of a single contract for professional services or construction services specified in this section and shall award the single contract on the basis of demonstrated competence and qualifications for the type of professional services or construction services pursuant to procedures prescribed in this section.

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

1. The following requirements apply:

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

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

(c) A purchasing agency is limited to one contract in each procurement under this section. Alternatively:

(i) For construction-manager-at-risk construction services, a purchasing agency may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.

(ii) For design-build construction services, a purchasing agency may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.

(iii) For professional services, a purchasing agency may enter into multiple contracts for different phases of a single project.

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

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

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

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

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

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

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

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

2. The purchasing agency shall issue a request for qualifications for each procurement and give adequate public notice of the request for qualifications in the same manner as provided in section 41-2533. The request for qualifications shall:

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

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

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

(i) Interviews will be held, the request for qualifications shall state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms to be interviewed and the request for qualifications may state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms on the final list and in determining their order on the final list. The final list selection criteria and relative weights may be different than the selection criteria and relative weights used to determine the persons or firms to be interviewed. The request for qualifications also shall state whether the purchasing agency will select the persons or firms on the final list and their order on the final list solely through the results of the interview process or through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the purchasing agency's request for qualifications.

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

(d) If the purchasing agency will hold interviews as part of the selection process, state that interviews will be held and that the interviews will be with at least three and no more than five persons or firms.

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

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

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

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

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

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

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

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

3. The director or head of a purchasing agency shall initiate an appropriately qualified selection committee for each request for qualifications in accordance with rules adopted by the director. The director or head of a purchasing agency shall ensure that the selection committee members are competent to serve on the selection committee. Each selection committee must include one employee of the purchasing agency or a purchasing agency representative appointed by the purchasing agency. If procuring professional services, the purchasing agency shall determine the number and qualifications of the selection committee members. A selection committee for the procurement of construction services shall not have more than seven members and shall include at least one person who is a senior management employee of a licensed contractor and one person who is an architect or an engineer who is registered pursuant to section 32-121. These members may be employees of the purchasing agency or outside consultants. Outside contractors, architects and engineers serving on a selection committee shall not receive compensation from the purchasing agency for performing this service, but the purchasing agency may elect to reimburse outside contractors, architects and engineers for travel, lodging and other expenses incurred in connection with service on a selection committee. A person who is a member of a selection committee shall not be a contractor under a contract awarded under the procurement or provide any professional services, construction, construction services, materials or other services under the contract. The selection committee and the purchasing agency shall do the following:

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

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

(ii) If the selection criteria and relative weight of the selection criteria to be used by the selection committee to select the persons or firms on the final list and to determine their order on the final list are not included in the request for qualifications, before the interviews are held the purchasing agency shall distribute to the persons or firms to be interviewed the selection criteria and relative weight of the selection criteria to be used to select the persons or firms on the final list and to determine their order on the final list. These selection criteria and relative weight may be different than the selection criteria and relative weight used to determine the persons or firms to be interviewed.

(iii) The selection committee shall conduct interviews with at least three but not more than five persons or firms as specified in the request for qualifications regarding the professional services or construction services and the relative methods of approach for furnishing the required professional services or construction services.

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

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

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

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

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

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

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

D. The director shall award the single contract under the procurement as provided in subsection E or F of this section.

E. The procurement officer shall conduct negotiations with persons or firms on the final list as follows:

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

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

3. The procurement officer shall enter into negotiations with the highest qualified person or firm on the final list.

4. If the procurement officer is not able to negotiate a satisfactory contract with the highest qualified person or firm on the final list, at compensation and on other contract terms the procurement officer determines to be fair and reasonable to this state, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer shall then undertake negotiations with the

next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list.

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

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

1. The procurement officer shall use the selection committee appointed for the request for qualifications pursuant to subsection C of this section.

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

3. The request for proposals shall include:

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

(b) A statement that the contract will be awarded to the person or firm whose proposal receives the highest number of points under a scoring method.

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

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

(ii) Offeror qualifications.

(iii) Offeror financial capacity.

(iv) Compliance with the purchasing agency's project schedule.

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

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

(vii) An offeror quality management plan.

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

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

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

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

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

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

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

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

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

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

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

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

11. For design-build construction services only, the procurement officer shall award a stipulated fee equal to a percentage, as prescribed in the request for proposals, of the purchasing agency's project final budget for design and construction, as prescribed in the request for proposals, but not less than two-tenths of one per cent of the project final budget for design and construction to each final list offeror who provides a responsive, but unsuccessful, proposal. If the procurement officer does not award a contract, all responsive final list offerors shall receive the stipulated fee based on the purchasing agency's project final budget for design and construction as included in the request for proposals. The procurement officer shall pay the stipulated fee to each offeror within ninety days after the award of the initial contract or the decision not to award a contract. In consideration for paying the stipulated fee, the procurement officer may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the offerors. Notwithstanding the other provisions of this paragraph, an offeror may elect to waive the stipulated fee. If an offeror elects to waive the stipulated fee, the purchasing agency may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the purchasing agency from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipulated fee.

G. At a minimum, the purchasing agency shall retain the following for each procurement under this section:

1. For each request for qualifications procurement process under subsection C of this section:

(a) If interviews were not held:

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

(ii) The final list.

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

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

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

(b) If interviews were held:

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

(ii) The final list.

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

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

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

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

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

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

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

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

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

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

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

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

1. Notwithstanding title 39, chapter 1, article 2, until the purchasing agency awards a contract or terminates the procurement, only the name of each person or firm on the final list developed pursuant to subsection C of this section may be made available to the public. All other information received by the purchasing agency in response to the request for qualifications pursuant to subsection C of this section or contained in proposals submitted pursuant to subsection F of this section shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing submitters and offerors during the selection process.

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

3. The proposals submitted under subsection F of this section shall not be made available to the public until after the purchasing agency has entered into a contract or terminated the procurement. At a minimum the proposals submitted under subsection F of this section that the purchasing agency is required to retain under subsection G of this section shall be made available to the public after the purchasing agency has entered into a contract or terminated the procurement.

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

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

I. A purchasing agency may cancel a request for qualifications or a request for proposals, reject in whole or in part any or all submissions of qualifications or proposals or determine not to enter into a contract as specified in the solicitation if it is in the best interest of the purchasing agency. The purchasing agency shall make the reasons for cancellation, rejection or determination not to enter into a contract part of the contract file.

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

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

[41-2579. Procurement of multiple contracts for certain job-order-contracting construction services and certain professional services; definition](#)

A. Except as authorized in this section and in sections 41-2535, 41-2536, 41-2537 and 41-2581, a purchasing agency shall not procure in a single procurement multiple contracts for construction services or professional services. In a procurement under this section, there is a single procurement process for all

of the multiple contracts included in the procurement. A purchasing agency may procure under this section:

1. Multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms.
2. Multiple contracts for professional services to be awarded to separate persons or firms or to be awarded to a single person or firm as specified in the request for qualifications.

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

C. In a procurement pursuant to this section:

1. The following requirements apply:

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

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

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

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

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

(ii) As to a request for qualifications for professional services or job-order-contracting construction services to be negotiated pursuant to subsection E of this section only, if only one responsive and responsible person or firm responds to the request for qualifications or if one or more persons or firms drop out of the procurement so that only one responsive and responsible person or firm remains in the

procurement, the director may elect to proceed with the procurement with only one person or firm if the director determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and that either other prospective persons or firms had reasonable opportunity to respond or there is not adequate time for a resolicitation.

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

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

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

(i) If the request for qualifications is for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms, that multiple contracts for similar job-order-contracting construction services may or will be awarded, the number of contracts that may or will be awarded, the services to be performed under each of the multiple contracts and that each of the multiple contracts will be awarded to a separate person or firm.

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

(b) State as to final lists:

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

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

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

(c) As prescribed below, state the selection criteria and relative weight of the selection criteria to be used by the selection committee, except that in a procurement for multiple contracts for job-order-contracting construction services to be awarded to separate persons or firms one of the criteria shall be the person's or

firm's subcontractor selection plan or procedures to implement the purchasing agency's subcontractor selection plan. All selection criteria under this subsection shall be factors that demonstrate competence and qualifications for the type of professional services or job-order-contracting construction services included in the procurement. If:

(i) Interviews will be held, the request for qualifications shall state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms to be interviewed and the request for qualifications may state the selection criteria and relative weight of the selection criteria to be used in selecting the persons or firms on each final list and in determining their order on each final list. The final list selection criteria and relative weights may be different than the selection criteria and relative weights used to determine the persons or firms to be interviewed. The request for qualifications also shall state whether the purchasing agency will select the persons or firms on the final list and their order on the final list solely through the results of the interview process or through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the purchasing agency's request for qualifications.

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

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

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

(ii) In a procurement of multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms or in a procurement of multiple contracts for similar professional services to be awarded to separate persons or firms, state that interviews will be held and that the interviews will be with a specified number of persons or firms. The specified number shall be stated in the request for qualifications, shall be determined by the purchasing agency and shall be the sum of the number of contracts that may or will be awarded and a number that is determined by the purchasing agency and that is not more than five.

(iii) In a procurement of multiple contracts for different professional services to be awarded to separate persons or firms, state that interviews will be held and that the interviews will be with a specified number of persons or firms. The specified number shall be stated in the request for qualifications, shall be determined by the purchasing agency, shall be at least three times the number of contracts that may or will be awarded and shall not be more than five times the number of contracts that may or will be awarded.

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

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

(ii) A subcontractor selection plan adopted by the purchasing agency that applies to the person or firm that is selected to perform the job-order-contracting construction services and that requires subcontractors to be selected based on qualifications alone or on a combination of qualifications and price and not based on

price alone and a requirement that each person or firm must submit a description of the procedures it proposes to use to implement the purchasing agency's subcontractor selection plan.

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

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

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

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

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

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

(b) Based only on the selection criteria and relative weight of the selection criteria specified as provided in this subsection for selection of the persons or firms on each final list and their order on each final list,

the selection committee shall select the persons or firms for each final list and in the case of a final list or final lists for multiple contracts that will be negotiated under subsection E of this section, rank the persons or firms on each final list in order of preference. If the procurement is for multiple contracts for different professional services to be awarded to separate persons or firms, there is a separate final list for each type of professional services, and if a person or firm submitted qualifications for more than one type of professional services, the person or firm may be on more than one final list.

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

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

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

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

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

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

D. The purchasing agency shall award multiple contracts specified in the request for qualifications as provided in subsection E or F of this section.

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

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

2. Multiple contracts for similar job-order-contracting construction services to be awarded to separate persons or firms or for multiple contracts for similar professional services to be awarded to separate persons or firms, there is one final list and the procurement officer shall enter into separate negotiations

for contracts with the number of the highest qualified persons or firms on the final list equal to the number of contracts to be awarded. If the procurement officer is not able to negotiate a satisfactory contract with a person or firm with whom the procurement officer has commenced negotiations, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer shall then undertake negotiations for a contract with the next most qualified person or firm on the final list with whom the procurement officer is not then negotiating and with whom the procurement officer has not previously negotiated in sequence until an agreement is reached for some or all of the multiple contracts included in the request for qualifications or a determination is made to reject all persons or firms on the final list.

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

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

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

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

3. The request for proposals shall include:

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

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

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

(i) Offeror qualifications.

(ii) Offeror financial capacity.

(iii) Compliance with the purchasing agency's project schedule.

(iv) The price or life cycle price for procurements that include maintenance services, operations services or finance services.

(v) An offeror quality management plan.

(vi) Other evaluation factors that demonstrate competence and qualifications for the job-order-contracting construction services in the request for proposals as determined by the purchasing agency, if any.

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

(e) A statement that in applying the scoring method the selection committee will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.

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

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

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

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

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

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

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

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

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

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

(a) If interviews were not held:

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

(ii) The final list.

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

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

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

(b) If interviews were held:

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

(ii) The final list.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[41-2580. Requirements applicable to construction services and professional services and to contracts for construction services and professional services; definition](#)

A. The requirements prescribed in this section apply to each contract entered into as the result of a procurement of construction services or professional services under section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581 and to the professional services and construction services included in each procurement under section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581.

B. If a procurement under section 41-2578 is for construction-manager-at-risk construction services or design-build construction services to be contracted pursuant to section 41-2578, subsection E or if a procurement under section 41-2535, 41-2536 or 41-2537 is for construction-manager-at-risk construction services or design-build construction services, the purchasing agency shall enter into a written contract with the contractor for preconstruction services under which the purchasing agency shall pay the contractor a fee for preconstruction services in an amount agreed by the purchasing agency and the contractor, and the purchasing agency shall not request or obtain a fixed price or a guaranteed maximum price for the construction from the contractor or enter into a construction contract with the contractor until after the purchasing agency has entered into the written contract for preconstruction services and a preconstruction services fee.

C. If a contract for construction services is entered into as the result of a procurement under section 41-2535, 41-2536, 41-2537, 41-2578 or 41-2579, construction shall not commence until the purchasing agency and contractor agree in writing on either a fixed price that the purchasing agency will pay for the construction to be commenced or a guaranteed maximum price for the construction to be commenced. The construction to be commenced may be the entire project or may be one or more phased parts of the project.

D. A contract for professional services entered into as the result of a procurement under section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581 shall have a term not exceeding five years after the date of contract award by the purchasing agency of the first contract under the procurement, except that the contract may continue in effect after the five year term for professional services on projects on which the rendering of professional services commences within the five year term.

E. Notwithstanding any other law:

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

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

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

1. The maximum dollar amount of an individual job order shall be one million dollars or such higher or lower amount prescribed by the purchasing agency in an action noticed pursuant to title 38, chapter 3, article 3.1 or a rule adopted by the purchasing agency as the maximum amount of an individual job order. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.

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

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

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

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

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

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

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

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

G. Notwithstanding any contrary provision of this section or this title, a purchasing agency shall not:

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

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

H. The prohibitions prescribed in subsection G of this section do not prohibit a purchasing agency from providing construction for itself as provided by law.

I. The purchasing agency shall include in each contract for construction services the full street or physical address of each separate location at which the construction will be performed and a requirement that the contractor and each subcontractor at any level include in each of its subcontracts the same address information. The contractor and each subcontractor at any level shall include in each subcontract the full street or physical address of each separate location at which construction work will be performed.

J. The following provisions apply to all construction services procured under section 41-2535, 41-2536, 41-2537, 41-2578 or 41-2579:

1. The contractor performing the construction services is permitted to self-perform part of the construction work, if and to the extent agreed in writing by the purchasing agency and the contractor. The purchasing agency may use methods other than competitive bidding to assure itself that the price the purchasing agency pays to the contractor for self-performed work is fair and reasonable. Permitted methods to evaluate fairness and reasonableness of the price of self-performed work include evaluation of the contractor's proposed scope of work and price for self-performed work by an estimator who is hired and paid by the purchasing agency, who is independent of the contractor and who may be an employee of the purchasing agency. Although the purchasing agency may elect to so require, nothing in this title or any other law shall be construed or interpreted to require the purchasing agency to require a contractor desiring to self-perform part of the construction work to competitively bid that part of the construction work against other contractors in a bid competition.

2. The following requirements apply to the construction work to be performed by subcontractors and do not apply to construction work that the purchasing agency and the contractor agree in writing will be self-performed by the contractor:

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

(b) The purchasing agency shall include in each contract:

(i) If the purchasing agency included its subcontractor selection plan in the request for qualifications, the purchasing agency's subcontractor selection plan and the procedures to implement the purchasing agency's subcontractor selection plan proposed by the selected person or firm in submitting its qualifications with those modifications to the procedures as the purchasing agency and the selected person or firm agree.

(ii) If the purchasing agency did not include its subcontractor selection plan in the request for qualifications, the subcontractor selection plan proposed by the selected person or firm in submitting its qualifications with those modifications as the purchasing agency and the selected person or firm agree.

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

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

41-2581. Procurement of certain professional services

A. A purchasing agency may procure under this section a single contract or multiple contracts for professional services if the contract is for professional services by an architect or architect firm and the contract amount is two hundred fifty thousand dollars or less or if the contract is for professional services by a person or firm other than an architect and the contract amount is five hundred thousand dollars or less. For such procurements, the director shall encourage persons or firms engaged in the lawful practice of the profession to submit annually a statement of qualifications and experience.

B. The director or head of the purchasing agency shall initiate an appropriately qualified selection committee for each procurement, which may include one contract or multiple contracts, pursuant to rules adopted by the director or purchasing agency. The amount of each contract in a single procurement under this section shall not exceed the dollar amount limits in subsection A. The selection committee shall evaluate current statements of qualifications and experience on file with the director or purchasing agency, together with those that may be submitted by other persons or firms regarding the procurement. If possible and practicable, the selection committee shall conduct interviews regarding the procurement and the relative methods of furnishing the required services and, if possible, shall select, in order of preference and based on criteria established and published by the selection committee, one or more final lists of the persons or firms deemed to be the most qualified to provide the services required. The selection committee shall base the selection of each final list and the order of preference on demonstrated competence and qualifications only. The purchasing agency and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this section, including the selection of the persons or firms to be interviewed, the selection of the persons and firms to be on a final list, in determining the order of preference of persons and firms on a final list or for any other purpose in the selection process. If the procurement is for:

1. A single contract or if the procurement is for multiple contracts to be awarded to a single person or firm, there shall be one final list of three persons or firms.

2. Multiple contracts for different professional services to be awarded to separate persons or firms, there shall be a separate final list of three persons or firms for each contract.

3. Multiple contracts for the same professional services to be awarded to separate persons or firms, there shall be one final list and the number of persons or firms on the final list shall be the number of contracts plus another number that is determined by the purchasing agency and that is not more than five.

C. After each final list is selected pursuant to subsection B, the procurement officer shall enter into negotiations with the highest qualified person or firm on each final list or, in the case of a single final list for multiple contracts for the same professional services to be awarded to separate persons or firms, the purchasing agency shall enter into negotiations with a number of the highest qualified persons or firms on the final list equal to the number of contracts that may or will be awarded. The negotiations shall include consideration of compensation and other contract terms that the procurement officer determines to be fair and reasonable to this state. In making this determination, the procurement officer shall take into account the estimated value, the scope, the complexity and the nature of the professional services to be rendered. If the procurement officer is unable to negotiate a satisfactory contract with a person or firm with which the purchasing agency is negotiating at a price and on other contract terms the procurement officer determines to be fair and reasonable to this state, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer may undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list. If the procurement officer terminates negotiations with a person or firm on a final list and commences negotiations with another person or firm on the final list, the procurement officer shall not in that procurement recommence negotiations or enter into the single contract or multiple contracts for the professional services covered by that final list with any person or firm on that final list with whom the procurement officer has terminated negotiations.

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

41-2582. Project delivery methods for design and construction services

A. A purchasing agency may procure design services, construction and construction services, as applicable, under any of the following project delivery methods:

1. Design-bid-build.
2. Construction-manager-at-risk.
3. Design-build.
4. Job-order-contracting.

B. For the design-bid-build project delivery method, the director shall procure:

1. Design services pursuant to section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581.
2. Construction by competitive sealed bidding, except as otherwise provided in section 41-2532.

C. The director shall procure construction services under the construction-manager-at-risk, design-build and job-order-contracting project delivery methods pursuant to section 41-2535, 41-2536, 41-2537, 41-2578 or 41-2579.

D. The director shall procure design services relating to a construction-manager-at-risk construction services project pursuant to section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581.

E. For job-order-contracting construction services projects, if the director does not include design services in the job-order-contracting construction services contract, the director shall procure any design services relating to job-order-contracting construction services projects under the contract pursuant to section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581. , 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581.

E. For job-order-contracting construction services projects, if the director does not include design services in the job-order-contracting construction services contract, the director shall procure any design services relating to job-order-contracting construction services projects under the contract pursuant to section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 or 41-2581.

Article 6 – Contract Clauses

41-2585. Contract clauses

A. The director may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance or other contract provisions.

B. The director may modify clauses for inclusion in any particular state contract, provided that any variations are supported by a written determination that states the circumstances justifying the variation and provided that notice of any material variation is stated in the solicitation.

C. All contract clauses shall be consistent with the provisions of this chapter and the regulations issued pursuant to this chapter.

41-2586. State preemption; indemnity agreements in construction and design professional services contracts void; definitions

A. A covenant, clause or understanding in, collateral to or affecting a construction contract or subcontract that purports to indemnify, to hold harmless or to defend the promisee of, from or against liability for loss or damage resulting from the negligence of the promisee or the promisee's agents, employees or indemnitee is against the public policy of this state and is void.

B. The regulation and use of indemnity agreements in construction and design professional services contracts are of statewide concern. The regulation of indemnity agreements in construction and design professional services contracts pursuant to this section and their use are not subject to further regulation by a county, city, town or other political subdivision of this state.

C. If a design professional provides work, services, studies, planning, surveys or other preparatory work in connection with a public building or improvement, the state purchasing agency, state governmental unit or property owner may require that the design professional services contract or subcontract require the

design professional to indemnify and hold harmless the state purchasing agency, state governmental unit or property owner, and its officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such design professional or other persons employed or used by such design professional in the performance of the contract or subcontract. A design professional services subcontract entered into in connection with a public building or improvement may also require any design professional to indemnify and hold harmless the purchasing agency, state governmental unit, or property owner and the indemnified design professional who executed the subcontract, and their respective owners, officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such design professional, or persons employed or used by the indemnifying design professional in connection with the subcontract. Nothing in this section shall prohibit the requirement of insurance coverage that complies with this section, including the designation of the state, state purchasing agency, state governmental unit or property owner as an additional insured on a general liability insurance policy or as a designated insured on an automobile liability policy provided in connection with a construction contract or subcontract or design professional services contract or subcontract.

D. A covenant, clause or understanding in, collateral to or affecting a design professional services subcontract that purports to indemnify, to hold harmless or to defend the promisee of, from or against liability for loss or damage resulting from the negligence of the promisee or the promisee's agents, employees or indemnitee is against the public policy of this state and is void.

E. Except as provided in subsection C of this section, a design professional services contract or subcontract entered into in connection with a public building or improvement shall not require that a design professional defend, indemnify, insure or hold harmless the state purchasing agency, state governmental unit or property owner or its employees, officers, directors, agents, contractors or subcontractors from any liability, damage, loss, claim, action or proceeding, and any contract provision that is not permitted by subsection C of this section is against the public policy of this state and is void.

F. Notwithstanding subsection A of this section, a contractor who is responsible for the performance of a construction contract or subcontract may fully indemnify a person, firm, corporation, state or other agency for whose account the construction contract or subcontract is not being performed and that, as an accommodation, enters into an agreement with the contractor that permits the contractor to enter on or adjacent to its property to perform the construction contract or subcontract for others.

G. If any provision or condition contained in this section conflicts with any provision of a contract between the state or a political subdivision of the state and the federal government, such provision of this section in conflict shall not apply to any construction contract or subcontract, or design professional services contract or subcontract to the extent such conflict exists, but all provisions of this section with which there is no such conflict, shall apply.

H. For the purposes of this section:

1. "Construction contract or subcontract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility, development or other improvement to land.

2. "Design professional services" means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination of those services performed by or under the supervision of a design professional or any person employed by the design professional.

3. "Design professional service contract or subcontract" means a written or oral agreement relating to the planning, design, construction administration, study, evaluation, consulting, inspection, surveying, mapping, material sampling, testing or other professional, scientific or technical services furnished in connection with any actual or proposed study, planning, survey, environmental remediation, construction, improvement, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility, development or other improvement to land.

4. "Other person employed or used" means a subcontractor to a contractor or design professional in any tier, or any other person or entity who performs work or design professional services, or provides labor, services, materials or equipment in connection with a construction contract or subcontract or design professional service contract or subcontract subject to this section.