

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

[R07-100]

PREAMBLE

- 1. Sections Affected**
R7-2-1109
R7-2-1110
R7-2-1116
- Rulemaking Action**
New Section
New Section
New Section
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 15-213(I)
- 3. The effective date of the rules:**
February 26, 2007
- 4. A list of all previous notices appearing in the Register addressing the exempt rules:**
Not Applicable
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Vince Yanez
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Phoenix, AZ 85007
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- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**
Pursuant to A.R.S. § 15-213(I), the state board of education shall adopt, and the auditor general shall review, rules authorizing school districts to procure construction services by construction-manager-at-risk, design-build, qualified select bidders list and job-order-contracting methods of project delivery. The rules shall require each school district that uses construction-manager-at-risk, design-build, qualified select bidders list or job-order-contracting to procure construction services to submit, on or before January 15 of each year, a report to the Secretary of State on the benefits associated with the use of such procurement methods.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
Not Applicable
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not Applicable
- 9. The summary of the economic, small business and consumer impact:**
The rules will provide additional methods for school districts to procure construction services. Districts anticipate cost savings as a result of these new methods. Also, the authorizing statute requires districts to report to the Secretary

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of State on an annual basis any cost savings and other benefits realized through the use of these procurement methods.

10. A description of the changes between the proposed rules, including supplemental notices and final rules (if applicable):

Not Applicable

11. A summary of the comments made regarding the rule and the agency response to them:

Comment:

School districts should have the option of whether to employ an independent consultant to review estimates prior to awarding contracts for construction [R7-2-1116(F)(6)].

Agency response:

The state board of education concurred with this comment and amended the relevant rule to make such review optional.

Comment:

The rule should not require that job-order-contracting contracts require a good faith effort to obtain a 10 percent small, disadvantaged, or women business goal. Concerns were raised that this exceeded statutory authority.

Agency response:

The Board concurred that there was no specific statutory authority to support this requirement and the proposed language was removed.

Comment:

The rule shall incorporate a mandated reporting requirement that was omitted from the original draft [R7-2-1116(N) and R7-2-1110(K)]. This requirement states that schools that use any APDM must submit to the Secretary of State, on or before January 15 of each year, a report that includes the number of projects completed in the preceding calendar year through the use of any APDM. The report shall also detail the benefits realized through the use of the procurement method and any cost savings or other benefits associated with the procurement method.

Agency Response:

The Board concurred and language was added to comply with this statutorily mandated report.

Comment:

The “factors” requirement articulated in R7-2-1116 (A)(6) should be removed as it exceeds statutory authority.

Agency Response:

This requirement lists a set of conditions that school district governing boards must consider prior to using any APDM. The Board determined that these factors will remain to ensure local governing boards are fully informed and engaged in the procurement of construction services through one of these methods. Additionally, the Arizona Department of Administration has set forth a similar rule with respect to state agencies [R2-7-503].

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not Applicable

13. Incorporations by reference and their location in the rules:

Not Applicable

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

Not Applicable

15. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 11. SCHOOL DISTRICT PROCUREMENT CONTINUED

Section

PROCUREMENT OF CONSTRUCTION

R7-2-1109. Notice of Competitive Sealed Bidding for Construction

R7-2-1110. Qualified Select bidders List

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R7-2-1116. Procurement of Construction Using Alternative Project Delivery Methods

ARTICLE 11. SCHOOL DISTRICT PROCUREMENT CONTINUED

R7-2-1109. Notice of Competitive Sealed Bidding for Construction

The school district shall issue notice of competitive sealed bidding for a construction contract to all vendors registered for such work on the school district's prospective bidders list. Such notice shall be issued in accordance with R7-2-1024 or R7-2-1022 if required, or if not required but the district so chooses.

R7-2-1110. Qualified Select Bidders List

As an alternative to R7-2-1109, the school district may use the qualified select bidders list method to determine the vendors who receive the notice of competitive sealed bidding for a construction contract. The qualified select bidders list shall be determined in accordance with this subsection.

A. Definitions

1. "Prospective proposer" means a prime contractor or construction materials supplier who submits a proposal in response to a Request for Qualifications under a Qualified Select Bidders List process.
2. "Qualified Select Bidders List" means a selection process for establishing a list of best-qualified prime contractors and/or construction material suppliers for a specific, single project. The selection process is based upon listed evaluation criteria and conducted through a Request for Qualifications. Once the selection process is complete, the qualified bidders are invited to submit a sealed competitive bid based upon architectural/engineering plans and specifications or material specifications.

B. Sealed prime contractor or construction materials supplier qualifications proposals shall be solicited through "Requests for Qualifications."

1. Requests for Qualifications shall be issued at least 21 days before the time and date set for submission.
2. Use of the qualified select bidders list shall be restricted to the specific project(s) identified in the request for qualifications.
3. The qualified select bidders list must consist of at least three prime contractors when a contractor is solicited or three construction material suppliers when material suppliers are solicited.
4. The qualified select bidders list for any specific project(s) is valid for one year but may be extended for an additional year, at the option of the school district.

C. The Request for Qualifications

1. The Request for Qualifications shall include the following:
 - a. Notice that all information and qualifications submittals by the prospective proposers will be made available for public inspection following the establishment of a qualified select bidders list.
 - b. Instructions and information to prospective proposers concerning the qualifications submittal requirements, including the time and date set for submittal deadline, the address of the office at which the submittals are to be received, the period during which the submittals shall be accepted, and any other special information.
 - c. The anticipated evaluation period and selection of a qualified select bidders list.
 - d. General information on the project site(s), scope of work, schedule, selection criteria, project design and construction budget, or life-cycle budget for a procurement that includes maintenance, operations, and finance services.
 - e. The weight prescribed by the school district for each of the criteria to be used in making the evaluation.
 - f. The criteria to be used in making the evaluation, which shall include at a minimum:
 - i. Firm's capabilities and qualifications for performing the scope of work;
 - ii. Contractors' or materials suppliers' project team, and key members' education, training and qualifications;
 - iii. Method of Approach, including subcontractor plan, safety plan;
 - iv. Safety record and worker's compensation rate;
 - v. Projected construction schedule;
 - vi. Current workload;
 - vii. Five most recent representative examples of similar work along with references for each example;
 - viii. Current bonding availability and capacity;
 - ix. Any judgment or liens against the prospective proposer within the last three years;
 - x. Any current unresolved bond claims against the prospective proposer;
 - xi. Any deficiency orders issued against the prime contractor by the Arizona Registrar of Contractors within the last three years; and
 - xii. Any filing under the United States Bankruptcy Code, assignments for the benefit of creditors, or other measures taken for the protection against creditors during the last three years.
 - g. The type of contract to be used.
 - h. The name of the district representative(s).
 - i. The expiration date of the qualified select bidders list if less than one year.
 - j. The district reserves the right to conduct interviews as part of the evaluation process.

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- D.** Pre-Proposal Conferences. The school district may conduct a pre-proposal conference not less than 14 days prior to the qualifications submittal date for the purposes of explaining the requirements of the request for qualifications.
- E.** Amendments to Request For Qualifications
1. An amendment to a request for qualifications shall be issued if necessary to do any of the following:
 - a. Make changes in the Request for Qualifications;
 - b. Correct defects or ambiguities; or
 - c. Furnish to prospective proposers information given to any other prospective proposer, if the information will assist the prospective proposers in submitting their qualifications proposal or if the lack of the information will prejudice the prospective proposers.
 2. Amendments to request for qualifications shall be so identified and shall be distributed to all persons to whom the original request for qualifications was distributed by the school district.
 3. Amendments to request for qualifications shall be issued within a reasonable time before the submittal date to allow prospective proposers to consider them in preparing their qualification proposals. If the school district determines that the time and date set forth in the request for qualifications does not permit sufficient time for proposal preparation, the time and date for the submittal shall be extended in the amendment or, if necessary, by telegram, telephone, or electronic communication and confirmed in the amendment.
- F.** Pre-submittal Modification or Withdrawal of Qualifications Proposals
1. A prospective proposer may modify or withdraw its proposal at any time before the prescribed submittal deadline if the modification or withdrawal is received before the time and date set for the submittal at the location designated in the request for qualifications.
 2. All documents concerning a modification or withdrawal of a proposal shall be retained in the official records of the school district.
- G.** Late Submittals, Late Withdrawals and Late Modifications
1. A submittal, modification or withdrawal is late if it is received at the location designated in the request for qualifications for receipt of qualification proposals after the time and date set for the submittal.
 2. A late qualification proposal, late modification, or late withdrawal shall be rejected, unless the qualifications proposal, modification or withdrawal would have been timely received but for the action or inaction of school district personnel and is received before the qualified select bidders list is established.
 3. Prospective proposers submitting qualifications proposals, modifications, or withdrawals that are rejected as late shall be so notified as soon as practicable.
 4. All documents concerning acceptance of a late qualifications proposal, late modification, or late withdrawal shall be retained in the official records of the school district.
- H.** Receipt, Opening and Recording Qualifications Proposals
1. Each qualifications proposal and modification shall be time and date stamped upon receipt and stored unopened in a secure place until the date and time set forth in the request for qualifications.
 2. Qualifications proposals and modifications shall be opened publicly at the date and time designated in the request for qualifications and in the presence of one or more witnesses. The name of each proposer and any other relevant information deemed appropriate by the school district shall be recorded. The record shall be available for public inspection.
 3. After the qualified select bidders list is established, the qualification proposals shall be available for public inspection, except that portion of a qualifications proposal that was designated as confidential pursuant to R7-2-1005 shall remain confidential from and after the time of the submittal deadline.
- I.** Establishing the Qualified Select Bidders List
1. The qualified select bidders list shall be established by determining the highest rated proposers from the qualification proposals received. This will be a minimum of three and a maximum of five.
 2. The determinations of the highest rated proposers shall be accomplished by having each member of the evaluation committee rate each proposal as to the established criteria for evaluation.
 3. For each qualified select bidders list process there will be established by the school district an evaluation committee composed of five members. These members shall include the project designer(s) or construction material specifier(s), one member from the prime contracting/construction material supplier community that performs commensurate level work and is disinterested in this project, a school district facilities representative and two other members as designated by the school district.
 4. The evaluation committee shall review and rate each proposal received according to the established evaluation criteria. The committee members shall make written notes as appropriate and submit those notes and their evaluation scores to the school district procurement agent. The school district procurement agent shall add the evaluation committee's scores for each qualification proposal and shall sign, date and submit those results to the evaluation committee for final determination of the three to five highest rated proposers, which will then constitute the qualified select bidders list. A one-year eligibility period for the qualified select bidders list shall begin on the date the school district procurement agent signs the evaluation results, and may be extended one year at the option of the school district.

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5. After the initial evaluation, the committee may conduct interviews with the proposers that have been identified to be the most highly qualified before making the final determination of the qualified select bidders list. The committee members shall make written notes as appropriate and submit those notes and their evaluation scores to the school district procurement agent. The school district procurement agent shall add the evaluation committee's scores for each qualification proposal and shall sign, date and submit those results to the evaluation committee for final determination of the three to five highest rated proposers, which will then constitute the qualified select bidders list. A one-year eligibility period for the qualified select bidders list shall begin on the date the school district procurement agent signs the evaluation results, and may be extended one year at the option of the school district.
 6. Once the qualified select bidders list is established, a written notice of the selected proposers will be sent to all the proposers.
 7. After the establishment of the qualified select bidders list, a written record showing the basis for determining the qualified select bidders list shall be prepared by the school district procurement agent, retained in the official records of the school, and made available to the public for review.
 8. The qualified select bidders shall then be provided an invitation for bid, which shall follow the established School District Procurement Rules, Arizona Administrative Code, Article 10, R7-2-1024 to R7-2-1032. For any projects not identified in the Requests for Qualifications, the district may not solicit bids on those projects under the qualified select bidders list either in the initial one-year period or the one-year extension period.
 9. Projects identified in the solicitation must have invitation for bids issued within the initial one-year period, or in the one-year extension period, to be awarded a contract under that qualified select bidders list.
- J. Less Than Three Proposals Are Received**
1. In the event that less than three qualifications proposals are received, this procurement process will cease and the school district may elect to reissue the request for qualifications or pursue other procurement methods.
 2. In the event that less than three proposers are identified by the selection committee as being the most highly qualified, this procurement process will cease and the school district may elect to reissue the request for qualifications or pursue other procurement methods.
- K. School districts that use the qualified select bidders list method to procure construction services shall adhere to the reporting requirements in R7-2-1116(O).**

R7-2-1116. Procurement of Construction Using Alternative Project Delivery Methods

A. Definitions

1. "Alternative project delivery methods for construction" means construction-manager-at-risk, design-build, and job-order-contracting construction services.
2. "Coefficient" means the contractor's price adjustment to the unit price in a job order contract. Several coefficients may apply to the unit price book.
3. "Construction-Manager-At-Risk" shall be used in this Section consistent with the definition in A.R.S. § 41-2503(5).
4. "Design-Bid-Build" shall be used in this Section consistent with the definition in A.R.S. § 41-2503(12).
5. "Design-Build" shall be used in this Section consistent with the definition in A.R.S. § 41-2503(13).
6. "Factors" means the conditions a school district governing board shall consider before making a decision to use an alternative project delivery method for construction. The factors shall address such things as industry practices, surveys, trends, past experiences, evaluations of completed projects, and related information regarding the expected benefits and drawbacks of particular alternative project delivery methods. To the extent practicable, such factors shall relate back to the specific characteristics of the project or projects at issue. Specific factors to be addressed are specified in R7-2-1116(B)(2).
7. "Job-Order-Contracting" shall be used in this Section consistent with the definition in A.R.S. § 41-2503(23).
8. "Life-cycle costs" means all relevant cost over time of a project. These include first costs, such as capital investment costs, purchase, and installation costs; future costs, such as energy costs, operating costs, maintenance costs, capital replacement costs, financing costs; and any resale, salvage, or disposal cost, over the life-time of the project.
9. "Prime contractor" means a general contractor, who contracts with a property owner and, in turn, employs a subcontractor, or subcontractors, to perform some or all of the work.
10. "Specific, single project" shall be used in this Section consistent with the definition in A.R.S. § 41-2503(35).
11. "Unit price" means the price published in the Unit Price Book for a specific construction or construction related task. Each unit price is comprised of labor, equipment, or material costs to accomplish a specific task, and shall be defined in the contract.
12. "Unit price book" means a comprehensive listing of specific construction related tasks together with a specific unit of measurement and a unit price.

B. Use of Alternative Project Delivery Methods

1. Alternative project delivery methods for construction services shall be procured as provided in this Section, except as authorized by R7-2-1024, R7-2-1033, R7-2-1053, R7-2-1056, and R7-2-1111 through R7-2-1115.
2. The school district's governing board shall consider, as applicable, the factors in R7-2-1116(A)(6) and below and make a written determination that the use of a specific alternative project delivery method is in the best interest of the

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district.

- a. Cost control – Lack of definition and many options on a project require a project delivery process where the designer, contractor, and school district work together to produce a best value design solution for a given budget. This is accomplished through contractor and designer value engineering efforts making trade-offs of different design solutions with the school district.
- b. Value engineering – The advantages provided by early involvement of the contractor in the design phase of the project. Value engineering includes constructability reviews, materials reviews, and design consultation. These services should result in increased project quality and lower lifetime costs associated with the project.
- c. Market conditions – Local and national economic conditions and the availability of various materials and services in the local construction market.
- d. Schedule – Critical timing of construction that may have to be phased or may need to be tailored to educational schedules.
- e. Specialized expertise – Unique features or functional requirements of the project that make past experience with similar situations or detailed knowledge critical to project success.
- f. Technical complexity – Any unusual or particularly technically-sensitive aspects of the project that require specific skills or experience. This may also include the district’s need to have the construction-manager-at-risk or design-build firm provide financing for the project as well as operations and maintenance services.
- g. Project management – An evaluation of the district’s ability to manage the project, in terms of experience, manpower, and the understanding and implementation of partnering and teambuilding concepts. These factors may indicate that an alternate or additional source of project management is warranted.

3. Each project under a design-build construction services contract or a construction-manager-at-risk construction services contract shall be a specific, single project. No additional project may be added to the scope of work that was not defined in the Request for Qualifications or request for proposals for such projects. This requirement shall not limit a school district’s ability to issue valid change orders for a design-build construction services contract or a construction-manager-at-risk construction services contract.

C. Selection Committee. A selection committee shall be established and utilized when a school district governing board approves using one of the following alternative project delivery methods of construction: construction-manager-at-risk, design-build, or job-order-contracting.

1. The school district shall establish a qualified selection committee for each construction-manager-at-risk, design-build, and job-order-contracting procurement. The selection committee shall consist of not less than five and no 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 A.R.S. § 32-121. Members of the selection committee may be employees of the school district or outside consultants.
 - a. Outside contractors, architects and engineers serving on a selection committee shall not receive compensation from the school district for performing this service, but the school district may reimburse them for travel, lodging, and other expenses incurred in connection with service on a selection committee.
 - b. A person who is a member of a selection committee shall not be a contractor under a construction-manager-at-risk, design-build, or job-order-contracting contract awarded under the procurement or provide construction, construction services, materials, or other services under the contract.
2. The selection committee shall be responsible for performing the following:
 - a. Evaluation of the statements of qualifications and performance data that are submitted in response to the school district’s Requests for Qualifications.
 - b. If determined by the school district and included in the Request for Qualifications, conducting 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 construction services. Except that if multiple contracts are being procured under a single Request for Qualifications, the number to be interviewed shall be at least three and not more than the number of contracts plus two.
 - c. Selecting a final list for each contract of three of the persons or firms, in order of preference and based on the criteria and the weighting of the criteria included in the Request for Qualifications, the selection committee deems to be the most qualified to provide the professional services or construction services. The district shall retain documentation detailing the basis for the selection of the persons or firms on the final list.
 - i. The selection of the final list and order of preference on the final list shall be based solely on demonstrated competence, including a subcontractor selection plan or procedures to implement the subcontractor selection plan. Selection shall not include consideration of fees, price, staff 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 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. If the Request for Qualifications solicited multiple contracts, the selection committee shall select a separate final list for each contract, except that if multiple contracts are being procured and if the Request for Qualifications specified that all of

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- the multiple contracts will be awarded to a single contractor, the selection committee may select a single final list for all of the multiple contracts.
- ii. Selection criteria shall require that the person or firm selected to perform the construction services 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 one- 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. The selection committee shall use this information as part of the basis of selection and the school district shall incorporate this plan, in part or in whole, into the contract as the school district so decides.
 - iii. If only two responsible and responsive persons or firms respond to the Request for Qualifications or if persons or firms withdraw from the procurement process so that there are only two responsible and responsive persons or firms remaining in the procurement process, the school district may elect to have the selection committee proceed with the procurement, including interviews and the final list, with those two persons or firms or the school district may readvertise pursuant to this subsection as the school district deems necessary or appropriate. If only one responsive and responsible person or firm responds to the Request for Qualifications, or if persons or firms withdraw from the procurement process for a contract or multiple contracts to be negotiated under the one-step process so that only one responsive and responsible person or firm remains in the procurement process, the school district may elect to proceed with only one person or firm in the procurement process and may award the contract or contracts to a single person or firm if the school district determines in writing that the fee negotiated pursuant to the one-step process is fair and reasonable and either other prospective persons or firms had a reasonable opportunity to respond or there is not adequate time for a resolicitation. If a person or firm on the final list withdraws or is removed from the procurement process and the selection committee determines that it is in the best interest of the school district, the selection committee may replace that person or firm with another person or firm that submitted qualifications and that is selected by the selection committee as the next most qualified.

D. The Request for Qualifications

1. The Request for Qualifications shall include the following:

- a. Instructions and information to prospective proposers concerning the qualifications submittal requirements, including the time and date set for submittal deadline, the address of the office at which the submittals are to be received, the period during which the submittals shall be accepted, and any other special information.
- b. The anticipated evaluation period before selection of a final list.
- c. General information on the project site, scope of work, schedule, selection criteria, project design and construction budget, or life-cycle budget for a procurement that includes maintenance, operations, and finance services.
- d. The weight prescribed by the school district for each of the criteria to be used in making the evaluation.
- e. The criteria to be used in making the evaluation, which shall include at a minimum:
 - i. Firm's capabilities and qualifications for performing the scope of work;
 - ii. Contractors' or materials suppliers' project team, and key members' education, training and qualifications;
 - iii. Method of Approach, including subcontractor plan, safety plan;
 - iv. Safety record and worker's compensation rate;
 - v. Projected construction schedule;
 - vi. Current workload;
 - vii. Five most recent representative examples of similar work along with references for each example;
 - viii. Current bonding availability and capacity;
 - ix. Any judgment or liens against the prospective proposer within the last three years;
 - x. Any current unresolved bond claims against the prospective proposer;
 - xi. Any deficiency orders issued against the prime contractor by the Arizona Registrar of Contractors within the last three years.
 - xii. Any filing under the United States Bankruptcy Code, assignments for the benefit of creditors, or other measures taken for the protection against creditors during the last three years.
- f. The type of contract to be used.
- g. The name of the district representative(s).
- h. If applicable, the district shall state that it will conduct interviews as part of the evaluation process.

E. Receipt and opening of statements of qualifications, technical proposals and price proposals for design build and job order contracting.

- 1. Statements of qualifications, technical proposals and price proposals shall be received and opened in accordance with R7-2-1045(A) and (B). Late statements and proposals, modifications, or withdrawals shall be considered in accordance with R7-2-1044 and R7-2-1049.
- 2. A school district may cancel a request for qualifications or a request for proposals or reject in whole or in part any or

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all submissions of qualifications or proposals as specified in the solicitation if it is in the best interest of the school district. The school district shall make the reasons for cancellation or rejection part of the procurement file.

F. Contract Awards

1. The school district shall award a contract for construction-manager-at-risk, design-build, and job-order-contracting alternative project delivery methods of construction services to one of the persons or firms on the final list for that contract. An exception may be made if only two of the persons or firms that the selection committee determines are qualified respond to the request for proposals or if one of the three persons or firms on the final list drops out of the procurement process so that only two persons or firms remain on the final list. In the case of an exception, the school district may elect to proceed with the procurement process with the two persons or firms or elect to readvertise. The decision to proceed or readvertise shall be made by the school district, as determined in its best interests. If only one responsive and responsible person or firm responds to the request for qualifications for a contract or multiple contracts to be negotiated under subsection (E) of this Section or if persons or firms withdraw from the procurement process so that only one responsive and responsible person or firm remains in the procurement process, the school district may award the contract or contracts to a single person or firm if the school district determines in writing that the fee negotiated pursuant to subsection (E) of this Section is fair and reasonable and either other prospective persons or firms had a reasonable opportunity to respond or there is not adequate time for a resolicitation.
2. Contract awards shall be made through a one-step or two-step process as follows:
 - a. A one-step selection process may be used for any of the alternative project delivery methods for construction. This process consists of:
 - i. The school district issuing a Request for Qualifications to all vendors registered for construction or construction services on the school district's prospective bidders list, pursuant to R7-2-1023 and R7-2-1024(A),(C), and (D); or R7-2-1022 if required, or if not required but the district so chooses.
 - ii. Evaluation of the statements of qualifications and performance data as outlined in R7-2-1116(C)(2) by the school district.
 - iii. Pending completion of subsections (i) and (ii) of this Section, the school district shall enter into separate negotiations for the contract with the highest qualified person or firm on the final list, for the construction services. The negotiations shall include consideration of compensation and other contract terms that the school district determines to be fair and reasonable. In making this determination, the school district shall take into account the estimated value, scope, complexity and nature of the construction services to be rendered.
 - iv. If the school district is unable to negotiate a satisfactory contract, including compensation and other contract terms determined to be fair and reasonable to the school district, with the person or firm considered to be the highest qualified on the final list, the school district shall formally terminate negotiations with that person or firm. After terminating negotiations with the highest qualified person or firm, the school district may 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.
 - v. If a contract for construction services is entered into pursuant to this subsection, construction shall not commence until the school district and contractor agree in writing on either a fixed price that the school district will pay for the construction or a guaranteed maximum price for the construction to be commenced. Once the school district enters into a contract for pre-construction or construction services, the procurement process is closed. Once closed, the school district shall not reopen a procurement process.
 - vi. The Request for Qualifications, statements of qualifications, and performance data shall be open to public inspection after the contract is awarded and the school district has executed the contract. To the extent that the offeror designates and the school district concurs, trade secrets and other proprietary data contained in a proposal shall remain confidential.
 - b. A two-step selection process may be used for the design-build and job order contracting delivery methods. This process consists of:
 - i. The school district issuing a Request for Qualifications to all vendors registered for construction or construction services on the school district's bidders list, pursuant to R7-2-1023 and R7-2-1024(A),(C), and (D); or R7-2-1022 if required, or if not required but the district so chooses.
 - ii. Evaluation of the statements of qualifications and performance data as outlined in R7-2-1116(C)(2) by the school district.
 - iii. Pending completion of subsection (i) and (ii) of this Section, the school district shall issue a request for proposals to the persons or firms on the final list for that contract. A request for proposals shall be issued at least 14 days before the closing date and time for receipt of proposals unless a shorter time is determined necessary by the school district.
 - iv. Notice of the request for proposals shall be issued in accordance with R7-2-1022.
 - v. If included by the school district in the request for proposals in subsection (G), the selection committee shall conduct discussions with all persons or firms that submit preliminary technical proposals. Discussions shall

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- be for the purpose of clarification to assure 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.
- vi. 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. Best and final proposals shall be obtained in accordance with R7-2-1048. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.
 - vii. After completion of any discussions pursuant to subsection (v) or if no discussions are held, each offeror shall submit separately its final technical proposal and its price proposal.
 - viii. Before opening any price proposal, the selection committee shall open and 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 evaluation and scoring.
 - ix. After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open, evaluate and 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 evaluation and scoring.
 - x. The school district 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 evaluation and award.
 - xi. The procurement file shall contain the combined tabulations signed by all members of the selection committee and the written basis on which the selection is made in the first step, and the award is made in the second step, including price competition evaluation in step two.
 - xii. The Request for Qualifications, statements of qualifications, and performance data, and technical/price proposals shall be open to public inspection after the contract is awarded and the school district has executed the contract. To the extent that the offeror designates and the school district concurs, trade secrets and other proprietary data contained in a proposal shall remain confidential.
 - xiii. For design-build construction services only, the school district shall award a stipulated fee equal to a percentage of the school district's project final design and construction budget, as prescribed in the request for proposals, but not less than two-tenths of one percent of the school district's project final design and construction budget, 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 school district's estimate of the project final design and construction budget as included in the request for proposals.
 - xiv. The procurement officer shall pay the stipulated fee to each offeror within 90 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 unsuccessful offerors.
 - xv. Notwithstanding the other provisions of this subsection, an unsuccessful final list offeror may elect to waive the stipulated fee. If an unsuccessful final list offeror elects to waive the stipulated fee, the school district may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the school district 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.
3. When using the two-step selection process, and if so stated in the request for proposals, the school district may award multiple contracts for job-order-contracting, if such awards are determined to be in the best interests of the school district.
 4. The contract requirements for construction-manager-at-risk and design-build may be written in multiple parts, or individual contracts prepared that separate any pre-construction services, design services, maintenance services, operations services, and finance services from construction services.
 5. The school district shall award the construction-manager-at-risk contract at the conceptual stage of the project prior to schematic design being completed. However, if unusual circumstances warrant awarding the construction-manager-at-risk contract after schematic design, the district governing board shall approve the justification for such an award.
 6. The school district shall perform a detailed review of the estimate that supports the guaranteed maximum price. If deemed necessary, the school district may consider using an architect, engineer, or professional consultant to assist the school district, if the review is outside the school district's expertise. That architect, engineer, or professional consultant shall be independent of the architect or engineer that was hired to prepare the construction documents for the project. In no case shall the school district award the construction phase of a construction-manager-at-risk or design-build project if the presented guaranteed maximum price is greater than the school district's budget for the project. The budget is the sum of the authorizing state agency funds plus school district funds.
 7. During negotiations for the construction-manager-at-risk contract, the school district shall determine that the pre-con-

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struction services, general conditions, schedule, construction contingency, and construction fees are reasonable and justified, and these shall be approved by the school district's governing board.

G. Request for Proposals. The request for proposals in a two-step selection process shall include the following:

1. A general description of the project site, scope, schedule, selection criteria, and project design and construction budget, or life cycle budget for a procurement that includes maintenance, operations, and finance services.
2. A statement that the contract or contracts will be awarded to the person or firm whose proposal receives the highest number of points under the scoring method specified in the solicitation.
3. A description of the scoring method, including a list of the factors and the number of points allocated to each factor. The factors in the scoring method shall include:
 - a. Offeror qualifications.
 - b. Offeror financial capacity.
 - c. Ability to comply with the school district's project schedule.
 - d. An offeror quality management plan.
 - e. A subcontractor management plan that contains information as to how the firm proposes to manage the subcontracting of the project or the job orders.
 - f. For design-build construction services, if the request for proposals does not contain the specifications prescribed in subsection (h)(iii) and for job-order-contracting construction services, the price or life cycle price for procurements that include maintenance services, operations services or finance services.
 - g. Other evaluation factors as determined by the school district.
 - h. For design-build construction services only:
 - i. Demonstrated compliance with the design requirements.
 - ii. The design requirements.
 - iii. Compliance of the offeror's price, or life cycle cost, for procurements that include maintenance services, operations services or finance services, with the school district's budget as prescribed in the request for proposals, if the request for proposals specifies that the school district will spend its project budget and not more than its project budget and is seeking the best proposal for the project budget.
4. A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal is 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.
5. A statement that in applying the scoring method, the selection committee will separately evaluate and score the technical proposal before opening, evaluating, and scoring the price proposal.
6. If the school district desires to conduct discussions with offerors, a statement that discussions may be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.
7. Type of contract to be used.
8. That offerors may designate as proprietary portions of the proposal.
9. Notice that all information and bids submitted by bidders, except as stated in subsection (8) above, will be made available for public inspection following the award of the contract.
10. Instructions and information to bidders concerning the bid submission requirements including the time and date set for opening the proposals, the address of office at which proposals are to be received, the period during which proposals shall be accepted, and any other special information.
11. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
12. The name of the district representative(s).
13. If the request for proposals incorporates documents by reference, the request for proposals shall specify where such documents may be obtained.
14. A request for proposals may require the submission of bid samples, descriptive literature, and technical data, and may require inspection or testing of a product before award.
15. For design-build construction services, the school district shall stipulate a fee equal to a percentage of the school district's project final design and construction budget, but not less than two-tenths of one percent of the project final design and construction budget, to be paid to each final list offeror who provides, a responsive, but unsuccessful, proposal.
16. For job-order-contracting, if it is the intent of the school district to award multiple contracts, it shall state that intention in the request for proposals.

H. Contractor Licenses

1. The contractor for design-build or job-order-contracting construction services is not required to be registered to perform design services pursuant to Arizona Revised Statute, 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 Arizona Revised Statute, Title 32, Chapter 10.

I. Contract and Performance Requirements

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1. The school district shall procure design, engineering, and other specified professional services relating to a construction-manager-at-risk construction services project pursuant to R7-2-1117 through R7-2-1123.
2. The school district shall negotiate pre-construction services, general conditions, schedules, construction contingency, and construction fees for construction-manager-at-risk and design-build projects that are reasonable and justified. Such fees shall be part of the construction-manager-at-risk or one-step design-build contract. For two-step design-build contracts, the fees shall be included in the vendor's proposal and shall become part of the awarded contract.
3. For job-order-contracting construction services projects, if the school district does not include design, engineering and other specified professional services in the job-order-contracting construction services contract, the school district shall procure such services pursuant to R7-2-1117 through R7-2-1123.
4. The school district shall ensure that no job order exceeds the maximum dollar amount determined pursuant to A.R.S. § 41-2578(J)(1). Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.
5. If the contractor subcontracts or intends to subcontract part or all of the work under a job order, the contractor shall make the subcontractor aware of job order pricing using standard task descriptions, applicable unit prices, and the quantity of standard tasks.
 - a. The contractor shall promptly deliver the following to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under a job order:
 - i. Descriptions of all standard individual tasks on which the subcontractor is invited to bid.
 - ii. Standard unit prices for the individual tasks on which the subcontractor is invited to bid.
 - b. If the contractor has already priced the job order, the contractor shall promptly deliver the following to each subcontractor invited or agreeing to do any of the work included in the job order:
 - i. Descriptions of all standard individual tasks on which the subcontractor is invited to perform.
 - ii. The estimated number of units of each standard individual task that is included in the work that the subcontractor is invited to perform.
 - iii. The standard unit price for each standard individual task that is included in the work that the subcontractor is invited to perform.
6. For job-order-contracting job orders, the school district shall set administrative limits to assure each job order does not exceed the limit set in subsection (H)(4). When a job order is being estimated without a pre-agreed upon unit price book, the school district shall determine the appropriateness of the job order costs. This determination shall be documented. When job-order-contracting job orders are accomplished under a guaranteed maximum price type construction without a unit price book, the process shall be open book.

J. Prohibitions

1. Notwithstanding anything to the contrary in this Section or this Article, a school district shall not:
 - a. Enter into a contract as contractor to provide construction-manager-at-risk construction services, design-build construction services, or job-order-contracting construction services.
 - b. Contract with itself, with another school district, with this state, or with any other governmental unit of this state, or the federal government for the school district to provide construction-manager-at-risk construction services, design-build construction services, or job-order-contracting construction services.
 - c. The prohibitions prescribed in subsections a. and b. of this Section do not prohibit a school district from providing construction for itself as provided by law.

- K.** The procurement officer 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.

L. Bid Security

1. Bid security executed in accordance with R7-2-1111(C), shall be provided for construction-manager-at-risk, design-build, and job-order-contracting procurements, if the school district estimates that the budget for construction, excluding the cost of any finance services, maintenance services, operations services, design services, pre-construction services, or other related services included in the contract, will be more than the amount established by A.R.S. § 15-213(A)(2):
 - a. For construction-manager-at-risk or design-build construction services: 10% of the school district's construction budget for the project as described in the request for proposals, excluding finance services, maintenance services, operations services, design services, pre-construction services, or any other related services included in the contract.
 - b. Job-order-contracting construction services: The amount prescribed by the school district in the request for proposals when using the two-step procurement process, but not more than 10% of the school district's reasonably estimated budget for construction that the school district believes is likely to actually be done during the first year under the contract, excluding any finance services, maintenance services, operations services, design ser-

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vices, pre-construction services, or other related services included in the contract.

2. Nothing in this Section prevents the school district from requiring such bid security in relation to any construction services contract.

M. Contract Performance and Payment Bonds

1. Contract performance and payment bonds executed in accordance with R7-2-1112 shall be provided for construction-manager-at-risk, design-build, and job-order-contracting contracts, if the school district estimates that the budget for construction, excluding the cost of any finance services, maintenance services, operations services, design services, pre-construction services, or other related services included in the contract, will be more than the amount established pursuant to A.R.S. § 15-213(A)(1).

- a. Performance and payment bonds for construction-manager-at-risk or design-build contracts shall be in an amount equal to 100% of the amount of construction services in the contract. The amount of the bonds shall not include the cost of any design services, pre-construction services, finance services, maintenance services, operations services, and other related services included in the contract.

- b. Performance and payment bonds for job-order-contracting contracts shall be in an amount equal to 100% of the amount of construction services in the contract. The amount of the bonds shall not include any design services, pre-construction services, finance services, maintenance services, operations services, or other related services included in the contract. The bond may be a single bond for the full term of the contract, a separate bond for each year of a multiyear contract, or a separate bond for each job order, as determined by the school district. If a single bond is obtained for the full term of the contract or a separate bond for each year of a multiyear contract, the bond amount shall initially be based on the school district's reasonable estimate of the amount of construction that the school district believes is likely to actually be done during the full term of the contract or during the particular year of a multiyear contract, as applicable.

N. Payment and Retention

1. The school district shall examine and verify the accuracy of all construction-manager-at-risk, design-build, and job-order-contracting pay applications and supporting documents prior to paying the contractor.

2. There shall be no retention for job-order-contracting construction services contracts. The school district may elect to have no retention for construction-manager-at-risk and design-build construction services contracts. If the school district elects to have retention, then payment retention for construction-manager-at-risk and design-build contracts shall be in accordance with R7-2-1114.

3. Retention applies only to amounts payable for construction and does not apply to amounts payable for design services, pre-construction services, finance services, maintenance services, operations services, or any other related services included in the contract.

- O.** School districts that use construction-manager-at-risk, design build, qualified select bidders list or job-order-contracting to procure construction services shall submit, on or before January 15 of each year, a report to the Secretary of State on the benefits associated with the use of such procurement methods. The report shall include the number of projects completed in the preceding calendar year using that procurement method, the cost and description of each project and an estimate of any cost savings or other benefits realized through the use of that procurement method.