

SIGNIFICANT PROCUREMENT ROLE CITATIONS

§ 38-501. Application of article

- A. This article shall apply to all public officers and employees of incorporated cities or towns, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards.
- B. Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town or political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.
- C. Other prohibitions in the state statutes against any specific conflict of interests shall be in addition to this article if consistent with the intent and provisions of this article.

§ 38-502. Definitions

In this article, unless the context otherwise requires:

1. "Compensation" means money, a tangible thing of value or a financial benefit.
2. "Employee" means all persons who are not public officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.
3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to section 38-509.
4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.
5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.
6. "Public agency" means:
 - (a) All courts.
 - (b) Any department, agency, board, commission, institution, instrumentality or legislative or administrative body of the state, a county, an incorporated town or city and any other political subdivision.
 - (c) The state, county and incorporated cities or towns and any other political subdivisions.
7. "Public competitive bidding" means the method of purchasing defined in title 41, chapter 4, article 3, or procedures substantially equivalent to such method of purchasing, or as provided by local charter or ordinance.
8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.
9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.
10. "Remote interest" means:
 - (a) That of a nonsalaried officer of a nonprofit corporation.
 - (b) That of a landlord or tenant of the contracting party.
 - (c) That of an attorney of a contracting party.
 - (d) That of a member of a nonprofit cooperative marketing association.
 - (e) The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five per cent of his total annual income.
 - (f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
 - (g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.
 - (h) That of a public school board member when the relative involved is not a dependent, as defined in section 43-1001, or a spouse.
 - (i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative, of any of the following:
 - (i) Another political subdivision.
 - (ii) A public agency of another political subdivision.
 - (iii) A public agency except if it is the same governmental entity.
 - (j) That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.

11. "Substantial interest" means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

§ 38-503. Conflict of interest; exemptions; employment prohibition

- A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.
- B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.
- C. Notwithstanding the provisions of subsections A and B of this section, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that:
 - 1. A school district governing board may purchase, as provided in sections 15-213 and 15-323, supplies, materials and equipment from a school board member.
 - 2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.
- D. Notwithstanding subsections A and B of this section and as provided in sections 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board.

§ 38-504. Prohibited acts

- A. A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.
- B. During the period of a public officer's or employee's employment or service and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.
- C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

§ 38-505. Additional income prohibited for services

- A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.
- B. This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

§ 38-506. Remedies

- A. In addition to any other remedies provided by law, any contract entered into by a public agency in violation of this article is voidable at the instance of the public agency.
- B. Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.
- C. The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

§ 38-507. Opinions of the attorney general, county attorneys, city or town attorneys and house and senate ethics committee

Requests for opinions from either the attorney general, a county attorney, a city or town attorney, the senate ethics committee or the house of representatives ethics committee concerning violations of this article shall be confidential, but the final opinions shall be a matter of public record. The county attorneys shall file opinions with the county recorder, the city or town attorneys shall file opinions with the city or town clerk, the senate ethics committee shall file opinions with the senate secretary and the house of representatives ethics committee shall file opinions with the chief clerk of the house of representatives.

§ 38-508. Authority of public officers and employees to act

- A. If the provisions of section 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.
- B. If the provisions of section 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

§ 38-509. Filing of disclosures

Every political subdivision and public agency subject to this article shall maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article.

§ 38-510. Penalties

- A. A person who:
 - 1. Intentionally or knowingly violates any provision of sections 38-503 through 38-505 is guilty of a class 6 felony.
 - 2. Recklessly or negligently violates any provision of sections 38-503 through 38-505 is guilty of a class 1 misdemeanor.
- B. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.
- C. It is no defense to a prosecution for a violation of sections 38-503 through 38-505 that the public officer or employee to whom a benefit is offered, conferred or agreed to be conferred was not qualified or authorized to act in the desired way.
- D. It is a defense to a prosecution for a violation of sections 38-503 through 38-505 that the interest charged to be substantial was a remote interest.

§ 38-511. Cancellation of political subdivision and state contracts; definition

- A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.
- B. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by section 37-289 and other lawful provisions of the lease.
- C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.
- D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.
- E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.
- F. Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.
- G. For purposes of this section, "political subdivisions" do not include entities formed or operating under title 48, chapter 11, 12, 13, 17, 18, 19 or 22.

§ 41-741. Definitions

14. "Significant procurement role":

- (a) Means any role that includes any of the following duties:
 - (i) Participating in the development of a procurement as defined in section 41-2503.
 - (ii) Participating in the development of an evaluation tool.
 - (iii) Approving a procurement as defined in section 41-2503 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 as defined in section 41-2503.
 - (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 as defined in section 41-2503 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.

§ 41-753. Unlawful acts; violation; classification

D. An employee of any agency as defined in section 41-1001, including the office of the governor, who has a significant role in the procurement of materials, services or construction shall not accept an offer of employment from or have employment discussions with any person or entity lobbying for or potentially responding to a solicitation during a period beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending at the time of the contract award. An employee of an agency as defined in section 41-1001, including the office of the governor, who has a significant role in the procurement of materials, services or construction shall not accept an offer of employment from or have employment discussions with the successful offeror or offerors and their lobbyists during a period beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins. The director of the department of administration may waive any or all of the waiting period in excess of twenty-four months for a procurement officer or an employee with a significant procurement role if the period of time that follows the signature of the nondisclosure agreement exceeds twenty-four months. A procurement officer or an employee seeking a waiver shall make a written request to the officer's or employee's state agency director, and the director of the state agency shall forward the request with a written recommendation to the director of the department of administration. The director of the department of administration shall provide a written decision and justification within fifteen business days after the receipt of the complete request. The director of the department of administration may not approve waiver requests for matters still in evaluation or within six months following the contract award. If the requesting party is the director or a deputy director of a state agency, the request for a waiver and all written materials, including a director recommendation, must be forwarded to the governor for a final decision. Except that the director may not make any recommendation or determination on the director's own request. An agency as defined in section 41-1001, including the office of the governor, shall inform its employees when the first nondisclosure agreement is signed on a particular solicitation, and the agency shall notify the state procurement administrator who shall post information regarding the date of the first nondisclosure agreement pertaining to a particular procurement activity on the department of administration's website. This subsection does not apply to a procurement officer or an employee who in good faith relies on a determination issued by the director pursuant to section 41-2517, subsection D that the procurement officer or employee has not had a significant procurement role.

§ 41-2503. Definitions

35. "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.

§ 41-2517. Procurement officers and procurement employees; violation; classification

- A. It is unlawful for a procurement officer or an employee having a significant procurement role to accept any position or have employment discussions with a person or firm lobbying or potentially responding to the solicitation beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending at the time of contract award. It is unlawful for a procurement officer or an employee having a significant procurement role to accept any position or have employment discussions with the successful offeror or offerors and their lobbyists beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant procurement role in the particular procurement.
- B. It is unlawful for a procurement officer or an employee having a significant procurement role to solicit an employment opportunity, regardless of who would receive such an opportunity, from any person or firm lobbying or potentially responding to a solicitation for the procurement of materials, services or construction beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending at the time of contract award. It is unlawful for a procurement officer or an employee having a significant procurement role to solicit an employment opportunity, regardless of who would receive such an opportunity, from the successful offeror or offerors and their lobbyists beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant role in the particular procurement.
- C. It is unlawful for a person or firm lobbying or potentially responding to a solicitation for the procurement of materials, services or construction to offer employment to a procurement officer, a procurement employee or an employee having a significant procurement role beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending at the time of contract award. It is unlawful for the successful offeror or offerors and their lobbyists to offer employment to a procurement officer, a procurement employee or an employee having a significant procurement role beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins, if the procurement officer or employee had a significant role in the particular procurement.
- D. The director of the department of administration may waive any or all of the waiting period required pursuant to subsections A, B and C of this section in excess of twenty-four months for a procurement officer or an employee with a significant procurement role if the period of time that follows the signature of the nondisclosure agreement exceeds twenty-four months. A procurement officer or an employee seeking a waiver shall make a written request to the officer's or employee's state governmental unit director, and the director of the state governmental unit shall forward the request with a written recommendation to the director of the department of administration. The director of the department of administration shall provide a written decision and justification within fifteen business days after the receipt of the complete request. The director of the department of administration may not approve waiver requests for matters still in evaluation or within six months following the contract award. If the requesting party is the director or a deputy director of a state governmental unit, the request for a waiver and all written materials, including a director recommendation, must be forwarded to the governor for a final decision, except that the director may not make any recommendation or determination on the director's own request.
- E. In response to a written request from an employee seeking clarification on whether the employee has played a significant role in a procurement, the director shall issue a determination in writing within fifteen days after receiving the request. The director may make a determination in writing that this section and section 41-753, subsection d do not apply if a particular solicitation, sole source procurement or competition impracticable procurement has been canceled or is associated with the privatization of existing state services that would result in the elimination of the position in state service of an employee with a significant procurement role. The director may delegate the authority to make determinations pursuant to this subsection to a director of a state agency. An agency director or agency deputy director may request a determination from the office of the governor regarding whether the agency director or agency deputy director played a significant role in a particular procurement for the purposes of the one-year employment restriction, and the office of the governor shall make a determination within thirty days after the receipt of the written request.
- F. It is unlawful for a procurement officer or an employee who was previously employed by a person or firm responding to a solicitation to serve in a significant procurement role for a period of one year following the person's previous employment.

- G. Beginning October 1, 2014, if an agency uses a qualified vendor list of persons or entities that are eligible to be selected to design, develop, implement or construct any form of project associated with the list, any procurement officer who was assigned to work evaluating or approving the vendor list or any employee having a significant procurement role in developing the vendor list shall not accept an offer of employment from or have employment discussions with a vendor on the list within one year after the initial publication of the list or accept an offer of employment from or have employment discussions with a newly added vendor within one year after the vendor is added to the original list. If a vendor from an approved list of qualified vendors is awarded a contract that is associated with the list, a procurement officer involved in selecting the vendor or an employee having a significant procurement role in selecting the vendor shall not accept an offer of employment from or have employment discussions with that vendor within one year after that vendor is awarded the contract.
- H. On signature of a nondisclosure agreement pertaining to a particular solicitation, or at the time of a request for a sole source or competition impracticable procurement, a procurement officer or an employee having a significant role in the procurement shall provide written disclosure of any financial interest the officer or employee, or the spouse of the officer or employee, may hold.
- I. A person who knowingly violates this section is guilty of a class 2 misdemeanor. On conviction the person is ineligible for appointment to or employment in a position in the state personnel system for a period of five years and, if the person is an employee of this state at the time of conviction, is subject to suspension for not less than ninety days or dismissal.
- J. This section does not apply to a procurement officer or employee who in good faith relies on a determination issued by the director pursuant to subsection D of this section that the procurement officer or employee has not had a significant procurement role.

§ 41-2534. Competitive sealed proposals

- A. A contract for materials or services may be entered into by competitive sealed proposals. This section does not apply to procurement of construction, construction services or specified professional services pursuant to section 41-2537, 41-2578, 41-2579 or 41-2581. Construction services shall be procured pursuant to section 41-2537, 41-2578 or 41-2579.
- B. Proposals shall be solicited through a request for proposals.
- C. Adequate public notice of the request for proposals shall be given in the same manner as provided in section 41-2533.
- D. Proposals shall be opened publicly at the time and place designated in the request for proposals. The name of each offeror shall be recorded in accordance with rules adopted by the director. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall be open for public inspection after contract award. To the extent the offeror designates and the state concurs, trade secrets or other proprietary data contained in the offer documents shall remain confidential in accordance with rules adopted by the director.
- E. The request for proposals shall state the relative importance of price and other evaluation factors. Specific numerical weighting is not required.
- F. As provided in the request for proposals, and under rules adopted by the director, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to ensure full understanding of the solicitation requirements and to permit revision of offers. Offerors shall be accorded fair treatment with respect to any opportunity for discussion. Revisions may be permitted after submission and before award. If discussions are conducted, all offerors who have submitted proposals that are determined by the procurement officer to be reasonably susceptible to being selected for award shall be invited to submit a best and final offer. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- G. The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to this state taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal. The contract file shall contain the basis on which the award is made.

§ 41-2537. Emergency procurements

Notwithstanding any other provision of this chapter, the director may make or authorize others to make emergency procurements if there exists a threat to public health, welfare or safety or if a situation exists which makes compliance with section 41-2533, 41-2534, 41-2578, 41-2579 or 41-2581 impracticable, unnecessary or contrary to the public interest as defined in rules adopted by the director, except that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file

§ 41-2538. Competitive selection procedures for certain professional services

- A. The services specified in section 41-2513 shall be procured in accordance with this section, except as authorized under section 41-2535, 41-2536 or 41-2537.

- B. Persons engaged in providing the types of services specified in section 41-2513 may submit statements of qualifications and expressions of interest in providing such types of services. The director may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.
- C. Adequate notice of the need for such services shall be given by the purchasing agency through a request for proposals. The request for proposals shall describe the services required and list the type of information and data required of each offeror.
- D. The head of the purchasing agency or a designee of such officer may conduct discussions with any offerors who submit a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- E. The award shall be made to the offeror determined in writing by the head of the purchasing agency or a designee of such officer to be best qualified based on the evaluation factors set forth in the request for proposals and after a written determination that the compensation is fair and reasonable. Selection may be made pursuant to the provisions of this section without requiring priced proposals, but if price is included in proposals submitted, no contract may be awarded solely on the basis of price.

§ 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.

§ 41-2616. Violation; classification; liability; civil penalty; enforcement authority

- C. A person who serves on an evaluation committee for a procurement shall sign a statement before reviewing bids or proposals that the person has no interest in the procurement other than that disclosed and will have no contact with any representative of a competing vendor related to the particular procurement during the course of evaluation of bids or proposals, except those contacts specifically authorized by sections 41-2534, 41-2537, 41-2538 and 41-2578. The person shall disclose on the statement any contact unrelated to the pending procurement that the person may need to have with a representative of a competing vendor and any contact with a representative of a competing vendor during evaluation of bids or proposals except those contacts specifically authorized by sections 41-2534, 41-2537, 41-2538 and 41-2578. A person who serves on an evaluation committee and who fails to disclose contact with a representative of a competing vendor or who fails to provide accurate information on the statement is subject to a civil penalty of at least one thousand dollars but not more than ten thousand dollars.

R2-5A-501. Standards of Conduct

- A. Required conduct. A state employee shall at all times:

1. Comply with federal and state laws and rules, statewide policies and employee handbook, and agency policies and directives;
2. Maintain high standards of honesty, integrity, and impartiality, free from personal considerations, or favoritism;
3. Be courteous, considerate, and prompt in interactions with and serving the public and other employees; and
4. Conduct himself or herself in a manner that will not bring discredit or embarrassment to the state.

- B. Prohibited conduct. A state employee shall not:

1. Use his or her official position for personal gain, or attempt to use, or use, confidential information for personal advantage;
2. Permit himself or herself to be placed under any kind of personal obligation that could lead a person to expect official favors;
3. Perform an act in a private capacity that may be construed to be an official act;
4. Accept or solicit, directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment, or loan that is, or may appear to be, designed to influence the employee's official conduct. This provision shall not prohibit acceptance by an employee of food, refreshments, or unsolicited advertising or promotional material of nominal value;
5. Directly or indirectly use or allow the use of state equipment or property of any kind, including equipment and property leased to the state, for other than official activities unless authorized by written agency policy or as otherwise allowed by these rules;
6. Inhibit a state employee from joining or refraining from joining an employee organization; or
7. Take disciplinary or punitive action against another employee that impedes or interferes with that employee's exercise of any right granted under the law or these rules.

- C. Consequences of non-compliance. An employee who violates the standards of conduct requirements listed in subsection (A) or (B) may be disciplined or separated from state employment. Any such actions involving a covered employee shall be in accordance with the rules in Subchapter B, Article 3.