

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 19-0341.01 Nicole Myers x4326

SENATE BILL 19-196

SENATE SPONSORSHIP

Lee and Danielson, Bridges, Fenberg, Fields, Foote, Ginal, Moreno, Pettersen, Story, Todd, Williams A., Winter, Zenzinger

HOUSE SPONSORSHIP

Garnett and Duran, Arndt, Becker, Bird, Buckner, Buentello, Caraveo, Cutter, Esgar, Exum, Froelich, Galindo, Gonzales-Gutierrez, Gray, Hansen, Herod, Hooton, Jackson, Kennedy, Kipp, Kraft-Tharp, Lontine, McLachlan, Melton, Michaelson Jenet, Mullica, Singer, Sirota, Snyder, Sullivan, Titone, Valdez A., Weissman

Senate Committees

State, Veterans, & Military Affairs

House Committees

State, Veterans, & Military Affairs
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE MODIFICATION OF PROCUREMENT REQUIREMENTS**

102 **FOR STATE CONTRACTS FOR PUBLIC PROJECTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill modifies procurement requirements for state contracts for public projects. The bill makes the following changes:

Invitation for bids: Currently, all construction contracts for public projects that do not receive federal money may be solicited by invitation for bids. The bill specifies that only a construction contract for a public project that is reasonably expected to cost \$1 million or less may be

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
April 29, 2019

HOUSE
Amended 2nd Reading
April 27, 2019

SENATE
3rd Reading Unamended
April 16, 2019

SENATE
Amended 2nd Reading
April 15, 2019

solicited by invitation for bids.

Competitive sealed best value bids: Currently, all construction contracts for public projects that do not receive federal money may be awarded by competitive sealed best value bidding. The bill specifies that, unless prohibited by federal law, a construction contract for a public project that is reasonably expected to cost over \$1 million is required to be awarded through competitive sealed best value bidding or integrated project delivery, and a construction contract for a public project that is reasonably expected to cost \$1 million or less may be awarded through competitive sealed best value bidding or integrated project delivery.

Current law specifies the evaluation factors that are required to be included in an invitation for competitive sealed best value bids for a public project. The bill adds several required evaluation factors including the craft labor staffing plan for the project for the bidder and the bidder's subcontractors, the anticipated utilization by the bidder and its subcontractors of apprentices registered with federal or state apprenticeship agencies to complete the work under the contract, and the safety plan and safety record of the bidder and the bidder's subcontractors.

Disclosure of subcontractors: The bill requires any contractor that responds to a competitive solicitation for a public project to disclose, in its initial bid or proposal, the top 5 subcontractor disciplines it plans to use to fulfill the requirements of the contract. The bill specifies how the top 5 subcontractor disciplines are measured and requires contractors to disclose subcontractors for the mechanical, electrical, and plumbing requirements of the contract, even if they are not included in the top 5 disciplines.

Apprenticeship utilization requirements: The general contractor for a public project financed in whole or in part by state money in the amount of \$1 million or more is required to submit, prior to the contract award, documentation to the contracting agency that certifies that all subcontractors used on the project participate in apprenticeship training programs that have been approved by a federal or state apprenticeship agency and have a proven record of graduating apprentices for at least 3 of the past 5 years. The contractor is required to provide specified supporting documentation to the contracting agency and the agency is required to make the documentation available to the public on its website. A contractor that plans to submit a bid for a public project may request a waiver of the apprenticeship requirements and the contracting agency is required make public all waivers and the specific rationale for granting the waiver.

Integrated project delivery: Current law specifies that integrated project delivery is a project delivery method in which there is a contractual agreement between an agency and a single participating entity for the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these

services, for a public project. The bill adds additional evaluation factors that a contracting agency is required to use to evaluate proposals and the capabilities of participating entities. The additional factors include information about past performance and experience of the bidder, the bidder's project management plan for the contract, the bidder's staffing plan, the bidder's safety plan and safety record, the bidder's job standards, and the availability and use of domestically produced iron, steel, and related manufactured goods to execute the contract.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 SECTION 1. In Colorado Revised Statutes, add 24-92-115 as
3 follows:

4 24-92-115. Apprenticeship utilization requirements -
5 mechanical, electrical, and plumbing contracts - public projects -

6 definition. (1) (a) UNLESS PROHIBITED BY APPLICABLE FEDERAL LAW,
7 AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF THIS
8 SECTION, THE CONTRACT FOR ANY PUBLIC WORKS PROJECT THAT DOES NOT
9 RECEIVE FEDERAL MONEY, INCLUDING A PUBLIC PROJECT THAT WILL HAVE
10 AN INTEGRATED PROJECT DELIVERY CONTRACT PURSUANT TO ARTICLE 93
11 OF THIS TITLE 24, IN THE AMOUNT OF ONE MILLION DOLLARS OR MORE
12 SHALL REQUIRE THE GENERAL CONTRACTOR OR OTHER FIRM TO WHICH THE
13 CONTRACT IS AWARDED TO SUBMIT, AT THE TIME THE MECHANICAL,
14 ELECTRICAL, OR PLUMBING SUBCONTRACTOR IS PUT UNDER CONTRACT,
15 DOCUMENTATION TO THE AGENCY OF GOVERNMENT THAT:

16 (I) IDENTIFIES THE CONTRACTORS OR SUBCONTRACTORS THAT
17 WILL BE USED FOR ALL MECHANICAL, SHEET METAL, FIRE SUPPRESSION,
18 SPRINKLER FITTING, ELECTRICAL, AND PLUMBING WORK REQUIRED ON THE
19 PROJECT;

20 (II) CERTIFIES THAT ALL FIRMS IDENTIFIED PARTICIPATE IN
21 APPRENTICESHIP PROGRAMS REGISTERED WITH THE UNITED STATES

1 DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING ADMINISTRATION
2 OR STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THE UNITED STATES
3 DEPARTMENT OF LABOR AND HAVE A PROVEN RECORD OF GRADUATING
4 APPRENTICES AS FOLLOWS:

5 (A) BEGINNING JULY 1, 2021, THROUGH JUNE 30, 2026, A
6 MINIMUM OF FIFTEEN PERCENT OF ITS APPRENTICES FOR AT LEAST THREE
7 OF THE PAST FIVE YEARS;

8 (B) BEGINNING JULY 1, 2026, THROUGH JUNE 30, 2031, A
9 MINIMUM OF TWENTY PERCENT OF APPRENTICES FOR AT LEAST THREE OF
10 THE PAST FIVE YEARS; AND

11 (C) BEGINNING JULY 1, 2031, AND EACH YEAR THEREAFTER, A
12 MINIMUM OF THIRTY PERCENT OF APPRENTICES FOR AT LEAST THREE OF
13 THE PAST FIVE YEARS; AND

14 (III) SUPPLIES SUPPORTING DOCUMENTATION FROM THE UNITED
15 STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP VERIFYING
16 THE INFORMATION PROVIDED IN THE CERTIFICATION SPECIFIED IN
17 SUBSECTION (1)(a)(II) OF THIS SECTION.

18 (b) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO THE
19 DEPARTMENT OF TRANSPORTATION, REGARDLESS OF THE AMOUNT OR
20 FUNDING SOURCE OF THE PUBLIC PROJECT. THE PROVISIONS OF THIS
21 SECTION ALSO DO NOT APPLY TO ANY COUNTY, CITY AND COUNTY, CITY,
22 MUNICIPALITY, TOWN, SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY
23 OTHER POLITICAL SUBDIVISION OF THE STATE.

24 (c) FOR THE PURPOSES OF SUBSECTION (1)(a)(II) OF THIS SECTION,
25 "GRADUATING" MEANS THE COMPLETION OF A MULTI-YEAR PROGRAM,
26 INCLUDING THE REQUISITE CLASSROOM COURSE WORK AND ON-THE-JOB
27 TRAINING REQUIREMENTS AND A CERTIFICATE OF COMPLETION ISSUED BY

1 THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP.

2 (2) THE DOCUMENTATION REQUIRED PURSUANT TO SUBSECTION (1)
3 OF THIS SECTION SHALL BE MADE PUBLICLY AVAILABLE BY THE
4 CONTRACTING AGENCY OF GOVERNMENT THROUGH ITS WEBSITE WITHIN
5 THIRTY DAYS FROM WHEN IT IS SUBMITTED.

6 (3) TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF
7 SUBSECTION (1) OF THIS SECTION, THE GENERAL CONTRACTOR OR OTHER
8 FIRM TO WHICH THE CONTRACT IS AWARDED SHALL AGREE TO PROVIDE
9 ADDITIONAL DOCUMENTATION TO THE CONTRACTING AGENCY REGARDING
10 AFFECTED APPRENTICESHIP TRAINING PROGRAMS RELATING TO THE
11 REQUIREMENTS OF THIS IF A CONTRACTING AGENCY OF GOVERNMENT
12 DETERMINES THAT A MECHANICAL, ELECTRICAL, OR PLUMBING
13 SUBCONTRACTOR HAS WILLFULLY FALSIFIED DOCUMENTATION OR
14 WILLFULLY MISREPRESENTED THEIR QUALIFICATIONS REQUIRED TO
15 COMPLY WITH THIS SECTION IN THE CONTRACT, THE AGENCY OF
16 GOVERNMENT SHALL DIRECT THE CONTRACTOR TO TERMINATE THE
17 SUBCONTRACTOR CONTRACT IMMEDIATELY AND THE SUBCONTRACTOR
18 WILL BE IMMEDIATELY REMOVED FROM THE PUBLIC PROJECT. AT THE
19 DISCRETION OF THE DIRECTOR OF THE DEPARTMENT OF PERSONNEL, THE
20 STATE MAY INITIATE THE PROCESS TO DEBAR THE CONTRACTOR PURSUANT
21 TO SECTION 24-109-105, AND MAY PURSUE ANY OTHER REMEDY PROVIDED
22 BY LAW.

23 (4) UPON EVALUATION OF THE SUBMITTED BIDS, THE
24 CONTRACTING AGENCY OF GOVERNMENT MAY WAIVE THE REQUIREMENTS
25 OF THIS SECTION FOR A PUBLIC PROJECT IF THE AGENCY OF GOVERNMENT
26 DETERMINES THAT THERE IS SUBSTANTIAL EVIDENCE THAT THERE WERE
27 NO RESPONSIVE, ELIGIBLE SUBCONTRACTORS AVAILABLE TO FULFILL THE

1 MECHANICAL, ELECTRICAL, OR PLUMBING PORTIONS OF THE CONTRACT.
2 EACH AGENCY OF GOVERNMENT THAT HAS CONTRACTS FOR PUBLIC
3 PROJECTS SUBJECT TO THE REQUIREMENTS OF THIS SECTION SHALL MAKE
4 PUBLIC ALL WAIVERS AND THE SPECIFIC RATIONALE FOR GRANTING THE
5 WAIVER. THE AGENCY OF GOVERNMENT SHALL POST NOTICE OF THE
6 WAIVER AND A JUSTIFICATION FOR THE WAIVER ON ITS WEBSITE.

7 (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO SUPERSEDE
8 THE REQUIREMENTS FOR LICENSED PLUMBERS, LICENSED ELECTRICIANS,
9 OR APPRENTICES REGISTERED WITH THE STATE PURSUANT TO TITLE 12,
10 INCLUDING SECTIONS 12-23-105, 12-23-110.5, 12-58-105, AND 12-58-117.

11 (6) (a) TO PROMOTE AND FACILITATE THE DEVELOPMENT OF NEW
12 APPRENTICESHIP PROGRAMS, AN APPRENTICESHIP PROGRAM THAT DOES
13 NOT SATISFY THE REQUIREMENTS OF SUBSECTION (1)(a) OF THIS SECTION
14 MAY PETITION THE DEPARTMENT OF LABOR AND EMPLOYMENT FOR
15 CONDITIONAL APPROVAL FOR PURPOSES OF THIS SECTION. TO BE ALLOWED
16 CONDITIONAL APPROVAL, AN APPRENTICESHIP PROGRAM MUST
17 DEMONSTRATE THE FOLLOWING:

18 (I) THE PROGRAM HAS BEEN REGISTERED WITH THE UNITED
19 STATES DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING
20 ADMINISTRATION OR A STATE APPRENTICESHIP COUNCIL AND HAS BEEN
21 PROVIDING TRAINING FOR AT LEAST SIX MONTHS; AND

22 (II) THE PROGRAM IS PERFORMING BONA FIDE APPRENTICESHIP
23 TRAINING AS EVIDENCED BY INFORMATION SHOWING THAT IT HAS THE
24 REQUIRE FACILITIES, PERSONNEL, AND OTHER RESOURCES NEEDED TO
25 PROVIDE SUCH TRAINING; AND

26 (b) (I) IF CONDITIONAL APPROVAL IS GRANTED, THE PROGRAM WILL
27 REMAIN ELIGIBLE FOR FUTURE COVERED PROJECTS, SUBJECT TO ANNUAL

1 REVIEWS BY THE DEPARTMENT OF LABOR AND EMPLOYMENT FOR FIVE
2 YEARS AFTER CONDITIONAL APPROVAL IS GRANTED OR UNTIL IT CAN
3 SATISFY THE REQUIREMENTS OF SUBSECTION (1)(a) OF THIS SECTION AND
4 CAN SHOW A THREE-YEAR GRADUATION TRACK RECORD.

5 (II) TO MAINTAIN CONDITIONAL APPROVAL PURSUANT TO THIS
6 SUBSECTION (6), THE APPRENTICESHIP PROGRAM MUST DEMONSTRATE TO
7 THE DEPARTMENT OF LABOR AND EMPLOYMENT THAT IT HAS REGISTERED
8 NEW APPRENTICES INTO ITS PROGRAM FOR EVERY YEAR IT HAS BEEN IN
9 OPERATION AND THAT IT HAS ADVANCED, AT A MINIMUM, TEN PERCENT OF
10 ITS APPRENTICES IN EACH YEAR OF OPERATION. THE DEPARTMENT SHALL
11 RESCIND A CONDITIONAL APPROVAL FOR ANY PROGRAM THAT FAILS TO
12 MAINTAIN THESE STANDARDS.

13 **SECTION 2.** In Colorado Revised Statutes, **add** part 2 to article
14 92 of title 24 as follows:

15 PART 2

16 PREVAILING WAGE FOR PUBLIC PROJECTS

17 **24-92-201. Definitions.** AS USED IN THIS PART 2, UNLESS THE
18 CONTEXT OTHERWISE REQUIRES:

19 (1) "AGENCY OF GOVERNMENT" MEANS ANY AGENCY,
20 DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION, INSTITUTION, OR
21 SECTION OF THE STATE WHICH IS A BUDGETARY UNIT EXERCISING
22 CONSTRUCTION CONTRACTING AUTHORITY OR DISCRETION. "AGENCY OF
23 GOVERNMENT" DOES NOT INCLUDE ANY COUNTY, CITY AND COUNTY, CITY,
24 MUNICIPALITY, TOWN, SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY
25 OTHER POLITICAL SUBDIVISION OF THE STATE.

26 (2) "CONTRACTOR" MEANS ANY PERSON HAVING A CONTRACT FOR
27 A PUBLIC PROJECT WITH AN AGENCY OF GOVERNMENT.

1 (3) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF
2 PERSONNEL.

3 (4) "EMPLOYEES" MEANS WORKERS WHO ARE EMPLOYEES
4 PURSUANT TO SECTION 8-4-101 (5), AND WHO ARE ENGAGED BY
5 CONTRACTORS OR SUBCONTRACTORS TO PERFORM JOBS ON VARIOUS TYPES
6 OF PUBLIC PROJECTS INCLUDING MECHANICS, LABORERS, AND OTHER
7 CONSTRUCTION WORKERS.

8 (5) "PUBLIC PROJECT" MEANS ANY CONSTRUCTION, ALTERATION,
9 REPAIR, DEMOLITION, OR IMPROVEMENT OF ANY LAND, BUILDING,
10 STRUCTURE, FACILITY, ROAD, HIGHWAY, BRIDGE, OR OTHER PUBLIC
11 IMPROVEMENT SUITABLE FOR AND INTENDED FOR USE IN THE PROMOTION
12 OF PUBLIC HEALTH, WELFARE, OR SAFETY AND ANY OPERATION OR
13 MAINTENANCE PROGRAMS FOR THE OPERATION AND UPKEEP OF SUCH
14 PROJECTS. "PUBLIC PROJECT" INCLUDES ANY WORK, CONSTRUCTION, OR
15 REPAIR PERFORMED BY A PRIVATE PARTY THROUGH A CONTRACT TO RENT,
16 LEASE, OR PURCHASE AT LEAST FIFTY PERCENT OF THE PROJECT BY ONE OR
17 MORE AGENCIES OF GOVERNMENT.

18 (6) "WAGES", "SCALE OF WAGES", "WAGE RATES", "MINIMUM
19 WAGES", AND "PREVAILING WAGES" MEANS:

20 (a) THE BASIC HOURLY RATE OF PAY; AND

21 (b) FOR MEDICAL OR HOSPITAL CARE, PENSIONS ON RETIREMENT
22 OR DEATH, COMPENSATION FOR INJURIES OR ILLNESS RESULTING FROM
23 OCCUPATIONAL ACTIVITY, OR INSURANCE TO PROVIDE ANY OF THE
24 FORGOING, FOR UNEMPLOYMENT BENEFITS, LIFE INSURANCE, DISABILITY
25 AND SICKNESS INSURANCE, OR ACCIDENT INSURANCE, FOR VACATION AND
26 HOLIDAY PAY, FOR DEFRAYING THE COSTS OF APPRENTICESHIP OR OTHER
27 SIMILAR PROGRAMS, OR FOR OTHER BONA FIDE FRINGE BENEFITS, BUT

1 ONLY WHERE THE CONTRACTOR OR SUBCONTRACTOR IS NOT REQUIRED BY
2 OTHER FEDERAL, STATE, OR LOCAL LAW TO PROVIDE ANY OF THOSE
3 BENEFITS, THE AMOUNT OF:

4 (I) THE RATE OF CONTRIBUTION IRREVOCABLY MADE BY A
5 CONTRACTOR OR SUBCONTRACTOR TO A TRUSTEE OR TO A THIRD PERSON
6 UNDER A FUND, PLAN, OR PROGRAM; AND

7 (II) THE RATE OF COSTS TO THE CONTRACTOR OR SUBCONTRACTOR
8 THAT MAY BE REASONABLY ANTICIPATED IN PROVIDING BENEFITS TO
9 EMPLOYEES PURSUANT TO AN ENFORCEABLE COMMITMENT TO CARRY OUT
10 A FINANCIALLY RESPONSIBLE PLAN OR PROGRAM WHICH WAS
11 COMMUNICATED IN WRITING TO THE EMPLOYEES AFFECTED.

12 **24-92-202. Contractors subject to provisions - weekly payment**
13 **of employees - rules.** (1) EXCEPT AS OTHERWISE PROVIDED IN
14 SUBSECTION (2) OF THIS SECTION, ANY CONTRACTOR WHO IS AWARDED A
15 CONTRACT FOR A PUBLIC PROJECT BY AN AGENCY OF GOVERNMENT IN THE
16 AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS OR MORE, AND ANY
17 SUBCONTRACTORS WORKING ON THE PUBLIC PROJECT, SHALL PAY THEIR
18 EMPLOYEES AT WEEKLY INTERVALS AND SHALL COMPLY WITH THE
19 ENFORCEMENT PROVISIONS ESTABLISHED IN SECTION 24-92-209. THIS
20 PART 2 APPLIES TO A CONTRACT FOR A PUBLIC PROJECT AWARDED
21 PURSUANT TO PART 1 OF THIS ARTICLE 92 AND TO AN INTEGRATED PROJECT
22 DELIVERY CONTRACT FOR A PUBLIC PROJECT AWARDED PURSUANT TO
23 ARTICLE 93 OF THIS TITLE 24. THIS PART 2 DOES NOT APPLY TO CONTRACTS
24 FOR PUBLIC PROJECTS THAT RECEIVE FEDERAL FUNDING.

25 (2) THIS PART 2 DOES NOT APPLY TO THE DEPARTMENT OF
26 TRANSPORTATION, REGARDLESS OF THE AMOUNT OR FUNDING SOURCE OF
27 THE PUBLIC PROJECT; EXCEPT THAT THE DEPARTMENT OF

1 TRANSPORTATION IS REQUIRED TO PAY EMPLOYEES PERFORMING WORK ON
2 ANY PUBLIC PROJECT, REGARDLESS OF THE AMOUNT OR FUNDING SOURCE
3 OF THE PUBLIC PROJECT, IN ACCORDANCE WITH THE REQUIREMENTS OF THE
4 FEDERAL "DAVIS-BACON ACT", 40 U.S.C. SEC 3141, ET SEQ.

5 (3) THE DIRECTOR MAY PROMULGATE RULES IN ACCORDANCE WITH
6 ARTICLE 4 OF THIS TITLE 24 AS MAY BE NECESSARY TO ADMINISTER AND
7 ENFORCE ANY REQUIREMENT OF THIS PART 2.

8 **24-92-203. Prevailing rate of wages and other payments -**
9 **specifications in solicitations and contract.** (1) BEFORE AWARDING ANY
10 CONTRACT FOR A PUBLIC PROJECT IN THE AMOUNT OF FIVE HUNDRED
11 THOUSAND DOLLARS OR MORE, AN AGENCY OF GOVERNMENT SHALL
12 OBTAIN FROM THE DIRECTOR THE GENERAL PREVAILING RATE, AS
13 DETERMINED BY THE DIRECTOR PURSUANT TO SECTION 24-92-205, OF THE
14 REGULAR, HOLIDAY, AND OVERTIME WAGES PAID AND THE GENERAL
15 PREVAILING PAYMENTS ON BEHALF OF EMPLOYEES TO LAWFUL WELFARE,
16 PENSION, VACATION, APPRENTICE TRAINING, AND EDUCATIONAL FUNDS IN
17 THE STATE, FOR EACH EMPLOYEE NEEDED TO EXECUTE THE CONTRACT FOR
18 THE PUBLIC PROJECT. PAYMENTS TO THE FUNDS MUST CONSTITUTE AN
19 ORDINARY BUSINESS EXPENSE DEDUCTION FOR FEDERAL INCOME TAX
20 PURPOSES BY CONTRACTORS AND SUBCONTRACTORS.

21 (2) AN AGENCY OF GOVERNMENT SHALL SPECIFY IN THE
22 COMPETITIVE SOLICITATION FOR A PUBLIC PROJECT IN THE AMOUNT OF
23 FIVE HUNDRED THOUSAND DOLLARS OR MORE AND IN THE CONTRACT FOR
24 SUCH PUBLIC PROJECT, THE GENERAL PREVAILING RATE OF THE REGULAR,
25 HOLIDAY, AND OVERTIME WAGES PAID AND THE PAYMENTS ON BEHALF OF
26 EMPLOYEES TO THE WELFARE, PENSION, VACATION, APPRENTICE TRAINING,
27 AND EDUCATION FUNDS EXISTING IN THE GEOGRAPHIC LOCALITY FOR EACH


1 EMPLOYEE NEEDED TO EXECUTE THE CONTRACT OR WORK.

2 (3) THE GENERAL PREVAILING RATE OF THE REGULAR, HOLIDAY,
3 AND OVERTIME WAGES PAID AND THE PAYMENTS ON BEHALF OF
4 EMPLOYEES TO THE WELFARE, PENSION, VACATION, APPRENTICE TRAINING,
5 AND EDUCATION FUNDS SPECIFIED IN THE COMPETITIVE SOLICITATION AND
6 IN THE CONTRACT FOR A PUBLIC PROJECT PURSUANT TO SUBSECTION (2) OF
7 THIS SECTION SHALL REMAIN THE SAME FOR THE DURATION OF THE WORK
8 ON THE PUBLIC PROJECT.

9 (4) CONTRACTING AGENCIES OF GOVERNMENT SHALL NOT
10 ARTIFICIALLY DIVIDE PUBLIC PROJECTS TO AVOID COMPLIANCE WITH THE
11 REQUIREMENTS OF THIS PART 2.

12 **24-92-204. Specification in contract - payment of wages -**
13 **amount and frequency - unclaimed prevailing wages special trust**
14 **fund - creation. (1) EVERY CONTRACT FOR A PUBLIC PROJECT SUBJECT**
15 **TO THE PROVISIONS OF THIS PART 2 SHALL CONTAIN A STIPULATION THAT:**

16 (a) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL PAY ALL
17 THE EMPLOYEES EMPLOYED DIRECTLY ON THE SITE OF THE WORK,
18 UNCONDITIONALLY AND NOT LESS OFTEN THAN ONCE A WEEK, AND
19 WITHOUT SUBSEQUENT DEDUCTION OR REBATE ON ANY ACCOUNT, THE
20 FULL AMOUNTS ACCRUED AT TIME OF PAYMENT COMPUTED AT WAGE
21 RATES NOT LESS THAN THOSE STATED IN THE COMPETITIVE SOLICITATION,
22 REGARDLESS OF ANY CONTRACTUAL RELATIONSHIPS THAT MAY BE
23 ALLEGED TO EXIST BETWEEN THE CONTRACTOR OR SUBCONTRACTOR AND
24 THE EMPLOYEES;

25 

26 (b) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL PREPARE
27 AND SUBMIT PAYROLL REPORTS TO THE CONTRACTING AGENCY OF

1 GOVERNMENT ON A MONTHLY BASIS THAT DISCLOSE ALL RELEVANT
2 PAYROLL INFORMATION, INCLUDING THE NAME AND ADDRESS OF ANY
3 ENTITIES TO WHICH FRINGE BENEFITS ARE PAID, AND THAT THE
4 CONTRACTING AGENCY OF GOVERNMENT IS REQUIRED TO REVIEW THE
5 CERTIFIED PAYROLL REPORTS IN A TIMELY MANNER AS REQUIRED BY THE
6 STATE CONTRACT;


7 (c) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL
8 MAINTAIN ON THE SITE WHERE PUBLIC PROJECTS ARE BEING CONSTRUCTED
9 A DAILY LOG OF EMPLOYEES EMPLOYED EACH DAY ON THE PUBLIC
10 PROJECT. THE LOG SHALL INCLUDE, AT A MINIMUM, FOR EACH EMPLOYEE
11 HIS OR HER NAME, PRIMARY JOB TITLE, AND EMPLOYER, AND SHALL BE
12 KEPT ON A FORM PRESCRIBED BY THE DIRECTOR. THE LOG SHALL BE
13 AVAILABLE FOR INSPECTION ON THE SITE AT ALL TIMES BY THE
14 CONTRACTING AGENCY OF GOVERNMENT AND THE DIRECTOR.

15 (d) IF THE CONTRACTOR OR ANY SUBCONTRACTOR FAILS TO PAY
16 WAGES AS ARE REQUIRED BY THE CONTRACT, THE CONTRACTING AGENCY
17 OF GOVERNMENT SHALL NOT APPROVE A WARRANT OR DEMAND FOR
18 PAYMENT TO THE CONTRACTOR UNTIL THE CONTRACTOR FURNISHES THE
19 CONTRACTING AGENCY OF GOVERNMENT EVIDENCE SATISFACTORY TO
20 SUCH AGENCY OF GOVERNMENT THAT SUCH WAGES SO REQUIRED BY THE
21 CONTRACT HAVE BEEN PAID; EXCEPT THAT THE CONTRACTING AGENCY OF
22 GOVERNMENT SHALL APPROVE AND PAY ANY PORTION OF A WARRANT OR
23 DEMAND FOR PAYMENT TO THE CONTRACTOR TO THE EXTENT THE AGENCY
24 OF GOVERNMENT HAS BEEN FURNISHED EVIDENCE SATISFACTORY TO THE
25 AGENCY OF GOVERNMENT THAT THE CONTRACTOR OR ONE OR MORE
26 SUBCONTRACTORS HAS PAID SUCH WAGES REQUIRED BY THE CONTRACT,
27 EVEN IF THE CONTRACTOR HAS NOT FURNISHED EVIDENCE THAT ALL OF

1 THE SUBCONTRACTORS HAVE PAID WAGES AS REQUIRED BY THE
2 CONTRACT. ANY CONTRACTOR OR SUBCONTRACTOR MAY USE THE
3 FOLLOWING PROCEDURE IN ORDER TO SATISFY THE REQUIREMENTS OF THIS
4 SECTION:

5 (I) THE CONTRACTOR OR SUBCONTRACTOR MAY SUBMIT TO THE
6 DIRECTOR, FOR EACH EMPLOYEE TO WHOM SUCH WAGES ARE DUE, A
7 CHECK AS REQUIRED BY THE DIRECTOR. SUCH CHECK SHALL BE PAYABLE
8 TO THAT EMPLOYEE OR TO THE STATE SO IT IS NEGOTIABLE BY EITHER OF
9 THOSE PARTIES. EACH SUCH CHECK SHALL BE IN AN AMOUNT
10 REPRESENTING THE DIFFERENCE BETWEEN THE ACCRUED WAGES REQUIRED
11 TO BE PAID TO THAT EMPLOYEE BY THE CONTRACT AND THE WAGES
12 ACTUALLY PAID BY THE CONTRACTOR OR SUBCONTRACTOR.

13 (II) IF ANY CHECK SUBMITTED PURSUANT THIS SUBSECTION (1)(d)
14 CANNOT BE DELIVERED TO THE EMPLOYEE WITHIN A REASONABLE PERIOD
15 AS DETERMINED BY THE DIRECTOR, THEN IT SHALL BE NEGOTIATED BY THE
16 STATE AND THE PROCEEDS DEPOSITED IN THE UNCLAIMED PROPERTY
17 TRUST FUND CREATED IN SECTION 38-13-116.6. NOTHING IN THIS
18 SUBSECTION (1) SHALL BE CONSTRUED TO LESSEN THE RESPONSIBILITY OF
19 THE CONTRACTOR OR SUBCONTRACTOR TO ATTEMPT TO LOCATE AND PAY
20 ANY EMPLOYEE TO WHOM WAGES ARE DUE.

21 
22 **24-92-205. Investigation and determination of prevailing**
23 **wages - filing of schedule. (1) IN DETERMINING THE APPLICABLE**
24 **PREVAILING WAGE FOR PUBLIC PROJECTS PURSUANT TO SECTION**
25 **24-92-204, THE DIRECTOR SHALL USE APPROPRIATE WAGE**
26 **DETERMINATIONS ISSUED BY THE UNITED STATES DEPARTMENT OF LABOR**
27 **IN ACCORDANCE WITH THE "DAVIS-BACON ACT", 40 U.S.C. SEC. 3141, ET**

1 SEQ., TO ESTABLISH THE PREVAILING WAGE RATES FOR THE APPLICABLE
2 TRADES OR OCCUPATION FOR THE GEOGRAPHIC LOCALITY OF THE PUBLIC
3 PROJECT. THE DIRECTOR SHALL KEEP A SCHEDULE ON FILE IN HIS OR HER
4 OFFICE OF THE CUSTOMARY PREVAILING RATE OF WAGES AND PAYMENTS
5 MADE TO OR ON BEHALF OF THE EMPLOYEES, WHICH SHALL BE OPEN TO
6 PUBLIC INSPECTION.

7 (2) THE DIRECTOR SHALL UPDATE THE APPLICABLE PREVAILING
8 WAGE FOR PUBLIC PROJECTS AS DETERMINED PURSUANT TO SUBSECTION
9 (1) OF THIS SECTION ON OR BEFORE JULY 1, 2022, AND ON OR BEFORE JULY
10 1 EACH YEAR THEREAFTER.

11 **24-92-206. Statutory provisions included in contracts.** A COPY
12 OF SECTIONS 24-92-203 AND 24-92-204 SHALL BE INSERTED IN ALL
13 CONTRACTS FOR PUBLIC PROJECTS AWARDED BY AN AGENCY OF
14 GOVERNMENT IF THE CONTRACT PRICE IS FIVE HUNDRED THOUSAND
15 DOLLARS OR MORE.

16 **24-92-207. Prevailing wage rates - posting.** (1) EACH
17 CONTRACTOR AWARDED A CONTRACT FOR PUBLIC PROJECT WITH A
18 CONTRACT PRICE OF FIVE HUNDRED THOUSAND DOLLARS OR MORE AND
19 EACH SUBCONTRACTOR WHO PERFORMS WORK ON THE PUBLIC PROJECT
20 SHALL POST IN CONSPICUOUS PLACES ON THE PROJECT, WHERE EMPLOYEES
21 ARE EMPLOYED, POSTERS THAT CONTAIN THE CURRENT PREVAILING RATE
22 OF WAGES AND THE CURRENT PREVAILING RATE OF PAYMENTS TO THE
23 FUNDS REQUIRED TO BE PAID FOR EACH EMPLOYEE EMPLOYED TO EXECUTE
24 THE CONTRACT AS ESTABLISHED IN SECTIONS 24-92-203 AND 24-92-204,
25 AND THE RIGHTS AND REMEDIES OF ANY EMPLOYEE DESCRIBED IN SECTION
26 24-92-210 FOR NONPAYMENT OF ANY WAGES EARNED PURSUANT TO THIS
27 SECTION. THE POSTERS SHALL BE FURNISHED TO CONTRACTORS AND

1 SUBCONTRACTORS BY THE DIRECTOR IN A FORM AND MANNER TO BE
2 DETERMINED BY THE DIRECTOR.

3 (2) A CONTRACTOR OR SUBCONTRACTOR WHO FAILS TO COMPLY
4 WITH THIS SECTION SHALL BE DEEMED GUILTY OF A CLASS 3 MISDEMEANOR
5 AND SHALL PAY TO THE DIRECTOR ONE HUNDRED DOLLARS FOR EACH
6 CALENDAR DAY OF NONCOMPLIANCE AS DETERMINED BY THE DIRECTOR.

7 (3) CONTRACTS FOR PUBLIC WORKS PROJECTS SHALL CONTAIN THE
8 SPECIFIC OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION
9 INCLUDING PROVISIONS REGARDING THE POSTING OF POSTERS ON THE JOB
10 SITE AS REQUIRED BY THIS SECTION AND THE DEPARTMENT'S PROCEDURES
11 FOR THE CONTRACTOR TO RECEIVE THE POSTERS.

12 **24-92-208. Apprenticeship contribution rate.** (1) (a) THE
13 DIRECTOR SHALL ESTABLISH A SEPARATE APPRENTICESHIP CONTRIBUTION
14 RATE UNDER THE PREVAILING WAGE AND FRINGE BENEFIT REQUIREMENTS
15 OF THIS PART 2.

16 (b) THE CONTRACTING AGENCY OF GOVERNMENT SHALL SPECIFY
17 IN THE COMPETITIVE SOLICITATION FOR A PUBLIC PROJECT IN THE AMOUNT
18 OF FIVE HUNDRED THOUSAND DOLLARS OR MORE AND IN THE CONTRACT
19 FOR SUCH PUBLIC PROJECT THE APPRENTICESHIP CONTRIBUTION RATE AND
20 FRINGE BENEFIT REQUIREMENTS OF THIS PART 2.

21 (c) THE DIRECTOR SHALL UPDATE THE APPLICABLE
22 APPRENTICESHIP CONTRIBUTION RATE AS DETERMINED PURSUANT TO
23 SUBSECTION (1)(a) OF THE SECTION ON OR BEFORE JULY 1, 2022, AND ON
24 OR BEFORE JULY 1 EACH YEAR THEREAFTER.

25 (d) THE APPLICABLE APPRENTICESHIP CONTRIBUTION RATE
26 SPECIFIED IN THE COMPETITIVE SOLICITATION AND IN THE CONTRACT FOR
27 A PUBLIC PROJECT PURSUANT TO THIS SUBSECTION (1) SHALL REMAIN THE

1 SAME FOR THE DURATION OF THE WORK ON THE PUBLIC PROJECT.

2 (2) THE AMOUNT OF THE APPRENTICESHIP CONTRIBUTION WILL BE
3 SET IN ACCORDANCE WITH THE APPRENTICESHIP CONTRIBUTION OF THE
4 COLLECTIVE BARGAINING AGREEMENT OF THE APPLICABLE TRADE IN THE
5 GEOGRAPHIC LOCALITY OF THE PUBLIC PROJECT. CONTRACTORS SHALL
6 ACHIEVE COMPLIANCE WITH THIS REQUIREMENT BY ONE OF THE
7 FOLLOWING OPTIONS:

8 (a) CONTRACTORS SIGNATORY TO THE APPLICABLE COLLECTIVE
9 BARGAINING AGREEMENT SHALL BE REQUIRED TO PAY NO MORE THAN THE
10 APPRENTICESHIP CONTRIBUTION RATE OF THE AGREEMENT:

11 (b) CONTRACTORS THAT ARE NOT SIGNATORY TO A COLLECTIVE
12 BARGAINING AGREEMENT BUT THAT ARE MEMBERS OF A MULTI-EMPLOYER
13 TRADE ASSOCIATION THAT SPONSORS AN APPRENTICESHIP PROGRAM
14 REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR'S
15 EMPLOYMENT AND TRAINING ADMINISTRATION OR DIRECTLY SPONSOR
16 SUCH A PROGRAM FOR THEIR OWN EMPLOYEES, SHALL PAY THE
17 DETERMINED APPRENTICESHIP CONTRIBUTION TO THAT PROGRAM OR TO A
18 STATE APPRENTICESHIP COUNCIL REGISTERED WITH THE UNITED STATES
19 DEPARTMENT OF LABOR; OR

20 (c) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5) OF THIS
21 SECTION, CONTRACTORS THAT DO NOT QUALIFY FOR EITHER OPTION
22 SPECIFIED IN SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION SHALL BE
23 REQUIRED TO PAY THE AMOUNT OF THE APPRENTICESHIP CONTRIBUTION
24 TO AFFECTED WORKERS IN CASH PAYMENTS IN ADDITION TO THE OTHER
25 COMPONENTS OF THE PREVAILING WAGE AND FRINGE BENEFIT PACKAGE
26 REQUIRED PURSUANT TO THIS PART 2.

27 (3) THE APPRENTICESHIP CONTRIBUTION RATE SHALL BE

1 DEDUCTED FROM THE PREVAILING WAGE RATE PACKAGE TO AVOID
2 DOUBLE PAYMENT BY THE CONTRACTOR OR SUBCONTRACTOR.

3 (4) TO THE EXTENT FEASIBLE, THE DEPARTMENT OF PERSONNEL
4 SHALL PUBLISH AN ANNUAL REPORT DETAILING THE AMOUNT OF
5 APPRENTICESHIP TRAINING CONTRIBUTION PAID PURSUANT TO
6 SUBSECTIONS (2)(a), (2)(b), AND (2)(c) OF THIS SECTION FROM
7 INFORMATION REPORTED BY THE CONTRACTING AGENCIES OF
8 GOVERNMENT.

9 (5) IF THE DATA TRACKED BY THE DEPARTMENT OF PERSONNEL
10 DEMONSTRATES THAT PORTIONS OF THE APPRENTICE CONTRIBUTIONS
11 REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION ARE PAID UNDER
12 THE REQUIREMENTS OF SUBSECTION (2)(c) OF THIS SECTION AT A HIGHER
13 RATE THAN UNDER THE REQUIREMENTS OF SUBSECTION (2)(a) OR (2)(b) OF
14 THIS SECTION, THE DEPARTMENT MAY PROMULGATE RULES FOR
15 ALTERNATIVES TO THE REQUIREMENTS SUBSECTION (2)(c) OF THIS
16 SECTION.

17 **24-92-209. Enforcement - rules.** (1) UPON RECEIPT OF A
18 COMPLAINT FROM AN EMPLOYEE, A FORMER EMPLOYEE, OR A
19 CONTRACTING AGENCY DERIVED FROM AN ANALYSIS OF CERTIFIED
20 PAYROLL RECORDS, A CONTRACTING AGENCY OF GOVERNMENT SHALL
21 REPORT ANY PERCEIVED VIOLATION OF THIS PART 2 TO THE CONTRACTOR
22 WITHIN FORTY-EIGHT HOURS OF BEING MADE AWARE OF THE PERCEIVED
23 VIOLATION. IN CONNECTION WITH THE PERCEIVED VIOLATION:

24 (a) THE CONTRACTING AGENCY OF GOVERNMENT SHALL ALLOW
25 THE CONTRACTOR TO CURE THE PERCEIVED VIOLATION WITHIN FIFTEEN
26 CALENDAR DAYS IF THE CONTRACTOR CAN DEMONSTRATE THE INSTANCE
27 IN QUESTION WAS THE RESULT OF LEGITIMATE ADMINISTRATIVE ERROR.

1 (b) IF THE CONTRACTOR DOES NOT REMEDY THE PERCEIVED
2 VIOLATION WITHIN FIFTEEN CALENDAR DAYS OR IF THE CONTRACTING
3 AGENCY DETERMINES THAT THE PERCEIVED VIOLATION WAS WILLFUL, THE
4 CONTRACTING AGENCY SHALL REPORT THE PERCEIVED VIOLATION TO THE
5 DEPARTMENT OF LABOR AND EMPLOYMENT FOR INVESTIGATION.

6 (2) (a) THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL
7 INVESTIGATE ALL COMPLAINTS REFERRED TO THE DEPARTMENT BY THE
8 CONTRACTING AGENCY OF GOVERNMENT TO DETERMINE IF THE PERCEIVED
9 VIOLATION WAS CONDUCTED IN A WILLFUL MANNER.

10 (b) FOR THE PURPOSES OF THIS SECTION, "WILLFUL VIOLATION"
11 INCLUDES INTENTIONAL VIOLATIONS AND THOSE VIOLATIONS MADE WITH
12 RECKLESS DISREGARD OR DELIBERATE IGNORANCE OF THE LAW.

13 (3) IF THE DEPARTMENT OF LABOR AND EMPLOYMENT DETERMINES
14 THAT A WILLFUL VIOLATION OCCURRED, IT SHALL REQUIRE RESTITUTION
15 OF APPLICABLE BACK PAY FOR THE IMPACTED EMPLOYEES AND SHALL
16 SUBJECT THE CONTRACTOR TO THE FOLLOWING FINES:

- 17 (a) FIVE THOUSAND DOLLARS FOR THE FIRST VIOLATION;
- 18 (b) TEN THOUSAND DOLLARS FOR THE SECOND VIOLATION; AND
- 19 (c) TWENTY-FIVE THOUSAND DOLLARS FOR THE THIRD AND ALL
20 SUBSEQUENT VIOLATIONS.

21 (4) AT THE DISCRETION OF THE DIRECTOR, THE CONTRACTOR MAY
22 BE DEBARRED IF THEY HAVE BEEN FOUND TO HAVE THREE OR MORE
23 WILLFUL VIOLATIONS IN ANY FIVE YEAR PERIOD. THE TERM OF DEBARMENT
24 WILL BE THREE YEARS.

25 (5) THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL
26 MAINTAIN A LIST OF CONTRACTORS WHO HAVE BEEN FOUND TO HAVE
27 WILLFULLY VIOLATED THIS ACT, INCLUDING DETAILS OF THE VIOLATION.

1 ON A PUBLICLY AVAILABLE WEBSITE.

2 (6) IF A CONTRACTING AGENCY OF GOVERNMENT OR THE
3 DEPARTMENT OF LABOR AND EMPLOYMENT FAILS TO RESOLVE AN
4 ACTIONABLE WAGE CLAIM WITHIN ONE HUNDRED TWENTY DAYS FROM
5 THE DATE OF THE INITIAL DETERMINATION BY THE DEPARTMENT THAT A
6 WILLFUL VIOLATION OCCURRED, THE EMPLOYEE SHALL HAVE THE RIGHT
7 TO FILE A PRIVATE LAWSUIT PURSUANT TO SECTION 24-92-210.

8 (7) THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL
9 PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE 24 AS
10 MAY BE NECESSARY TO ADMINISTER AND ENFORCE ANY REQUIREMENT OF
11 THIS PART 2. SUCH RULES SHALL INCLUDE A REASONABLE
12 ADMINISTRATIVE APPEAL PROCESS FOR DETERMINATIONS MADE PURSUANT
13 TO THIS SECTION AND AN ADMINISTRATIVE PROCESS FOR AN EMPLOYEE OR
14 FORMER EMPLOYEE OF A CONTRACTOR OR SUBCONTRACTOR TO FILE A
15 COMPLAINT FOR A VIOLATION OF THIS PART 2.

16 **24-92-210. Private right of action to collect wages or benefits**
17 **- definition. (1) AN EMPLOYEE OR FORMER EMPLOYEE OF A CONTRACTOR**
18 **OR SUBCONTRACTOR MAY BRING A CIVIL ACTION FOR A VIOLATION OF**
19 **SECTION 24-92-204 FOR APPROPRIATE INJUNCTIVE RELIEF, ACTUAL**
20 **DAMAGES, OR BOTH WITHIN THREE YEARS AFTER THE OCCURRENCE OF THE**
21 **ALLEGED VIOLATION. AN ACTION COMMENCED PURSUANT TO THIS**
22 **SECTION MAY BE BROUGHT IN THE DISTRICT COURT FOR THE COUNTY**
23 **WHERE THE ALLEGED VIOLATION OCCURRED, THE COUNTY WHERE THE**
24 **COMPLAINANT RESIDES, OR THE COUNTY WHERE THE PERSON AGAINST**
25 **WHOM IN THE CIVIL COMPLAINT IS FILED RESIDES OR HAS THEIR PRINCIPAL**
26 **PLACE OF BUSINESS. ANY CONTRACTOR OR SUBCONTRACTOR WHO**
27 **VIOLATES SECTION 24-92-204 SHALL BE LIABLE TO THE AFFECTED**

1 EMPLOYEE OR EMPLOYEES IN THE AMOUNT OF UNPAID WAGES OR BENEFITS
2 PLUS INTEREST.

3 (2) A CONTRACTOR OR SUBCONTRACTOR'S RESPONSIBILITY AND
4 LIABILITY IS SOLELY FOR ITS OWN EMPLOYEES.

5 (3) AN ACTION INITIATED PURSUANT TO THIS SECTION MAY BE
6 BROUGHT BY ONE OR MORE EMPLOYEES OR FORMER EMPLOYEES ON
7 BEHALF OF HIM OR HERSELF OR THEMSELVES AND OTHER EMPLOYEES
8 SIMILARLY SITUATED; EXCEPT THAT NO EMPLOYEE SHALL BE A PARTY TO
9 ANY SUCH ACTION UNLESS HE OR SHE CONSENTS IN WRITING TO BECOME
10 SUCH A PARTY AND SUCH CONSENT IS FILED IN THE COURT IN WHICH SUCH
11 ACTION IS BROUGHT.

12 (4) IF THE COURT FINDS THAT AN ACTION BROUGHT PURSUANT TO
13 THIS SECTION WAS FRIVOLOUS, THE COURT SHALL AWARD COSTS AND
14 ATTORNEY FEES TO THE DEFENDANT IN THE ACTION.

15 (5) THE COURT IN AN ACTION FILED UNDER THIS SECTION SHALL
16 AWARD AFFECTED EMPLOYEES OR FORMER EMPLOYEES LIQUIDATED
17 DAMAGES IN AN AMOUNT EQUAL TO [REDACTED] THE AMOUNT OF UNPAID WAGES
18 OR BENEFITS OWED. UNPAID FRINGE BENEFIT CONTRIBUTIONS OWED
19 PURSUANT TO THIS SECTION IN ANY FORM SHALL BE PAID TO THE
20 APPROPRIATE BENEFIT FUND; EXCEPT THAT IN THE ABSENCE OF AN
21 APPROPRIATE FUND THE BENEFIT SHALL BE PAID DIRECTLY TO THE
22 INDIVIDUAL.

23 (6) THE FILING OF A CIVIL ACTION UNDER THIS SECTION SHALL NOT
24 PRECLUDE THE DIRECTOR FROM PROHIBITING A CONTRACTOR OR
25 SUBCONTRACTOR FROM BIDDING ON OR OTHERWISE PARTICIPATING IN
26 STATE CONTRACTS OR FROM PROHIBITING TERMINATION OF WORK ON
27 FAILURE TO PAY AGREED WAGES.

1 (7) (a) ANY PERSON, FIRM, OR CORPORATION FOUND TO HAVE
2 WILLFULLY MADE A FALSE OR FRAUDULENT REPRESENTATION IN
3 CONNECTION WITH WAGE OBLIGATIONS OWED ON A CONTRACT SHALL BE
4 REQUIRED TO PAY A CIVIL PENALTY IN AN AMOUNT OF NO LESS THAN ONE
5 THOUSAND DOLLARS AND NOT GREATER THAN THREE THOUSAND DOLLARS
6 PER REPRESENTATION. SUCH PENALTIES SHALL BE RECOVERABLE IN CIVIL
7 ACTIONS FILED PURSUANT TO THIS SECTION.

8 (b) FOR PURPOSES OF THIS SUBSECTION (7) "WILLFULLY" MEANS
9 REPRESENTATIONS THAT ARE KNOWN TO BE FALSE OR REPRESENTATIONS
10 MADE WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THEIR
11 TRUTH OR FALSITY.

12 (8) AN EMPLOYER SHALL NOT DISCHARGE, THREATEN, OR
13 OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE, OR FORMER EMPLOYEE,
14 REGARDING COMPENSATION TERMS, CONDITIONS, LOCATIONS OR
15 PRIVILEGES OF EMPLOYMENT BECAUSE THE EMPLOYEE OR FORMER
16 EMPLOYEE, OR A PERSON OR ORGANIZATION ACTING ON HIS OR HER
17 BEHALF REPORTS OR MAKES A COMPLAINT UNDER THIS SECTION OR
18 OTHERWISE ASSERTS HIS OR HER RIGHTS UNDER THIS SECTION.

19 **SECTION 3.** In Colorado Revised Statutes, 24-109-105, **amend**
20 **(2)(e) and (2)(f); and add (2)(g) as follows:**

21 **24-109-105. Debarment and suspension.** (2) A person may be
22 debarred for any of the following reasons:

23 (e) The person is currently under debarment by any other
24 governmental entity which is based upon a settlement agreement or a final
25 administrative or judicial determination issued by a federal, state, or local
26 governmental entity; ~~or~~

27 (f) The department of labor and employment has imposed three

1 fines on a contractor within five years pursuant to section 8-17-104,
2 C.R.S., for failure to satisfy Colorado labor requirements; OR

3 (g) THE PERSON WILLFULLY FALSIFIED DOCUMENTATION OR
4 WILLFULLY MISREPRESENTED THEIR QUALIFICATIONS REQUIRED TO
5 COMPLY WITH THE CONTRACT.

6 **SECTION 4. Act subject to petition - effective date -**
7 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
8 the expiration of the ninety-day period after final adjournment of the
9 general assembly (August 2, 2019, if adjournment sine die is on May 3,
10 2019); except that, if a referendum petition is filed pursuant to section 1
11 (3) of article V of the state constitution against this act or an item, section,
12 or part of this act within such period, then the act, item, section, or part
13 will not take effect unless approved by the people at the general election
14 to be held in November 2020 and, in such case, will take effect on the
15 date of the official declaration of the vote thereon by the governor.

16 (2) This act applies to solicitations issued on or after July 1, 2021;
17 except that for institutions of higher education and the Auraria higher
18 education center created in article 70 of title 23, Colorado Revised
19 Statutes, this act applies to public projects approved by their governing
20 boards on or after July 1, 2021.