

CHAPTER 9

GOVERNMENT - STATE

HOUSE BILL 95-1032

BY REPRESENTATIVES Nichol, Clarke, Gordon, Hernandez, Jerke, and Reeser;
also SENATORS Meiklejohn, Hopper, Johnson, Matsunaka, Pascoe, Perlmutter, and Weissmann.

AN ACT

CONCERNING THE PROCEDURES FOR GRANTING STATE CONTRACTS.

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

SECTION 1. 8-18-101 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 8-18-101 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

8-18-101. Bid preference - state contracts. (1) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), when a contract for commodities ~~and~~ OR services is to be awarded to a bidder, a resident bidder as defined in section 8-19-102 shall be allowed a preference against a nonresident bidder equal to the preference given or required by the state in which the nonresident bidder is a resident.

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (1), WHEN AN INVITATION FOR BIDS FOR A CONTRACT FOR THE PURCHASE OF COMMODITIES RESULTS IN A LOW TIE BID, AS DEFINED IN SECTION 24-103-101, C.R.S., THE PROVISIONS OF SECTION 24-103-202.5, C.R.S., APPLY.

(c) FOR THE PURPOSES OF THIS SUBSECTION (1), "COMMODITIES" INCLUDES SUPPLIES AS DEFINED IN SECTION 24-101-301 (22), C.R.S.

(3) THIS SECTION APPLIES TO CONTRACTS GOVERNED BY THE PROCUREMENT CODE IN ARTICLES 101 TO 112 OF TITLE 24, C.R.S.

SECTION 2. 24-101-105, Colorado Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

24-101-105. Application of this code - state preference. (3) THE PROVISIONS OF SECTION 8-18-101, C.R.S., WHICH REQUIRE A PREFERENCE FOR RESIDENT BIDDERS UNDER CERTAIN CIRCUMSTANCES, APPLY TO THE AWARD OF CONTRACTS UNDER THIS CODE.

SECTION 3. 24-103-101, Colorado Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

24-103-101. Definitions. As used in this article, unless the context otherwise requires:

(3.5) "LOW TIE BIDS" MEANS LOW RESPONSIBLE BIDS FROM BIDDERS THAT ARE IDENTICAL IN AMOUNT AND THAT MEET ALL THE REQUIREMENTS AND CRITERIA SET FORTH IN THE INVITATION FOR BIDS PURSUANT TO THIS CODE.

(6) "RESIDENT BIDDER" MEANS:

(a) A PERSON OR BUSINESS THAT IS AUTHORIZED TO TRANSACT BUSINESS IN COLORADO AND THAT MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS IN COLORADO; OR

(b) A PERSON OR BUSINESS THAT IS AUTHORIZED TO TRANSACT BUSINESS IN COLORADO, THAT MAINTAINS A PLACE OF BUSINESS IN COLORADO, AND THAT HAS FILED COLORADO UNEMPLOYMENT COMPENSATION REPORTS IN AT LEAST SEVENTY-FIVE PERCENT OF THE EIGHT QUARTERS IMMEDIATELY BEFORE BIDDING ON A CONTRACT.

SECTION 4. 24-103-202 (2) and (7), Colorado Revised Statutes, 1988 Repl. Vol., are amended to read:

24-103-202. Competitive sealed bidding. (2) (a) An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

(b) AN INVITATION FOR BIDS FOR A CONTRACT FOR THE PURCHASE OF SUPPLIES SHALL ALSO STATE THE REQUIRED PROCEDURES AND CRITERIA FOR AWARDING THE CONTRACT AS PROVIDED IN SECTION 24-103-202.5 IF LOW TIE BIDS ARE RECEIVED.

(7) The contract shall be awarded with reasonable promptness by written notice to the low responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids, EXCEPT AS OTHERWISE PROVIDED FOR CERTAIN LOW TIE BIDS UNDER SECTION 24-103-202.5. In the event that all bids for a construction project exceed available funds, as certified by the appropriate fiscal officer, the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsible bidder in order to bring the bid within the amount of available funds; except that the functional specifications integral to completion of the project may not be reduced in scope, taking into account the project plan, design, and specifications and quality of materials.

SECTION 5. Part 2 of article 103 of title 24, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

24-103-202.5. Low tie bids - award procedure and determination - bid preference. (1) IF LOW TIE BIDS ARE RECEIVED IN RESPONSE TO AN INVITATION FOR BIDS FOR A SUPPLY CONTRACT, THE FOLLOWING PROCEDURES ARE REQUIRED:

(a) IF THE LOW TIE BIDS ARE FROM A RESIDENT BIDDER AND A NONRESIDENT BIDDER, THE RESIDENT BIDDER SHALL BE GIVEN PREFERENCE OVER THE NONRESIDENT BIDDER;

(b) IF THE LOW TIE BIDS ARE FROM RESIDENT BIDDERS, THE PROCUREMENT OFFICER SHALL:

(I) USE A FAIR AND REASONABLE PROCEDURE FOR DETERMINING WHICH BIDDER RECEIVES THE CONTRACT AWARD THAT AT A MINIMUM PROVIDES FOR THE PRESENCE, AT THE TIME AND PLACE THE DETERMINATION IS MADE, OF THE BIDDERS OR THE BIDDERS' REPRESENTATIVES AND AN IMPARTIAL WITNESS DESIGNATED BY THE PROCUREMENT OFFICER WHO IS NOT AN EMPLOYEE OF THAT PROCUREMENT OFFICER'S AGENCY; AND

(II) GIVE THE BIDDERS AT LEAST FIVE BUSINESS DAYS' WRITTEN NOTICE BY CERTIFIED MAIL OF THE DATE THE DETERMINATION WILL BE MADE, OF THE PROCEDURE FOR MAKING THE DETERMINATION, AND THAT THE BIDDERS OR THE BIDDERS' REPRESENTATIVES MAY BE PRESENT WHEN THE DETERMINATION IS MADE;

(c) IF THE LOW TIE BIDS ARE ONLY FROM NONRESIDENT BIDDERS, THE PROCUREMENT OFFICER SHALL FOLLOW THE PROCEDURES IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1);

(d) ALL OTHER APPLICABLE PROVISIONS OF THE CODE THAT ARE NOT INCONSISTENT WITH THIS SECTION SHALL BE FOLLOWED.

(2) IF THE PROCUREMENT OFFICER DETERMINES THAT COMPLIANCE WITH THIS SECTION WILL CAUSE DENIAL OF FEDERAL MONEYS THAT WOULD OTHERWISE BE AVAILABLE OR WOULD OTHERWISE BE INCONSISTENT WITH FEDERAL LAW, THIS SECTION SHALL BE SUSPENDED, BUT ONLY TO THE EXTENT NECESSARY TO PREVENT DENIAL OF THE MONEYS OR TO ELIMINATE THE INCONSISTENCY WITH FEDERAL LAW.

SECTION 6. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to bids for state contracts submitted on or after said date.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 17, 1995