

CHAPTER 87

TRANSPORTATION

HOUSE BILL 99-1324

BY REPRESENTATIVES George, Alexander, Chavez, Dean, Fairbank, Gagliardi, Gordon, Grossman, Hoppe, Kaufman, King, Larson, Lawrence, Lee, Mace, May, Miller, Mitchell, Ragsdale, Saliman, Scott, Sinclair, Spence, Swenson, Tapia, Taylor, Tool, Veiga, Webster, S. Williams, T. Williams, and Witwer;
also SENATORS Powers, Anderson, Arnold, Blickensderfer, Chlouber, Congrove, Epps, Evans, Hernandez, Lamborn, Musgrave, Nichol, Owen, Reeves, Tebedo, and Teck.

AN ACT

CONCERNING THE AUTHORITY OF THE DEPARTMENT OF TRANSPORTATION TO ENGAGE IN DESIGN-BUILD CONTRACTING FOR TRANSPORTATION PROJECTS.

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

SECTION 1. Article 1 of title 43, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 14
DESIGN-BUILD CONTRACTS

43-1-1401. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE INCREASED POPULATION GROWTH AND ECONOMIC ACTIVITY WITHIN THE STATE HAS RESULTED IN THE SIGNIFICANT AND GROWING DEMAND FOR INCREASED CONSTRUCTION AND RECONSTRUCTION OF HIGHWAYS AND OTHER TRANSPORTATION PROJECTS WITHIN THE STATE TO FACILITATE THE MOVEMENT OF PEOPLE, GOODS, AND INFORMATION;

(b) AS A RESULT OF THE INCREASED FEDERAL AND STATE FUNDING PROVIDED TO THE DEPARTMENT OF TRANSPORTATION IN RECENT YEARS FOR TRANSPORTATION PROJECTS, TOGETHER WITH THE INCREASING NUMBER, SIZE, AND COMPLEXITY OF PLANNED TRANSPORTATION PROJECTS, THE DEPARTMENT WILL BENEFIT FROM THE USE OF A FASTER, MORE EFFICIENT, AND MORE COST-EFFECTIVE CONTRACTOR SELECTION AND PROCUREMENT PROCESS TO DESIGN AND CONSTRUCT TRANSPORTATION PROJECTS;

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

(c) A DESIGN-BUILD SELECTION AND PROCUREMENT PROCESS WILL PROVIDE THE DEPARTMENT OF TRANSPORTATION WITH: A SAVINGS OF TIME, COST, AND ADMINISTRATIVE BURDEN; IMPROVED QUALITY EXPECTATIONS WITH RESPECT TO THE SCHEDULE AND BUDGET OF TRANSPORTATION PROJECTS, AS WELL AS COMPLETION OF SUCH PROJECTS; AND A REDUCTION IN THE RISKS ASSOCIATED WITH TRANSPORTATION PROJECTS, INCLUDING REDUCED DUPLICATION OF EXPENSES AND IMPROVED COORDINATION OF EFFORTS TO MEET THE TRANSPORTATION NEEDS OF COLORADO.

(2) THE GENERAL ASSEMBLY INTENDS THAT THIS PART 14 AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO ENTER DESIGN-BUILD CONTRACTS AND TO USE AN ADJUSTED SCORE DESIGN-BUILD SELECTION AND PROCUREMENT PROCESS FOR PARTICULAR TRANSPORTATION PROJECTS REGARDLESS OF THE MINIMUM OR MAXIMUM COST OF SUCH PROJECTS, BASED ON THE INDIVIDUAL NEEDS AND MERITS OF SUCH PROJECTS, AND SUBJECT TO APPROVAL BY THE TRANSPORTATION COMMISSION. THE GENERAL ASSEMBLY ALSO INTENDS THAT THE DEPARTMENT'S USE OF AN ADJUSTED SCORE DESIGN-BUILD CONTRACT PROCESS SHALL NOT PROHIBIT USE OF THE LOW BID PROCESS CURRENTLY USED BY THE DEPARTMENT PURSUANT TO PART 1 OF ARTICLE 92 OF TITLE 24 AND PART 14 OF ARTICLE 30 OF TITLE 24, C.R.S.

43-1-1402. Definitions. AS USED IN THIS PART 14:

(1) "ADJUSTED SCORE DESIGN-BUILD CONTRACT PROCESS" MEANS A PROCESS TO AWARD CONTRACTS BASED ON THE LOWEST ADJUSTED SCORE OF PROPOSALS SUBMITTED TO THE DEPARTMENT.

(2) "BEST VALUE" MEANS THE OVERALL MAXIMUM VALUE OF A PROPOSAL TO THE DEPARTMENT AFTER CONSIDERING ALL OF THE EVALUATION FACTORS DESCRIBED IN THE SPECIFICATIONS FOR THE TRANSPORTATION PROJECT OR THE REQUEST FOR PROPOSALS, INCLUDING BUT NOT LIMITED TO THE TIME NEEDED FOR PERFORMANCE OF THE CONTRACT, INNOVATIVE DESIGN APPROACHES, THE SCOPE AND QUALITY OF THE WORK, WORK MANAGEMENT, AESTHETICS, PROJECT CONTROL, AND THE TOTAL COST OF THE TRANSPORTATION PROJECT.

(3) "DESIGN-BUILD CONTRACT" MEANS THE PROCUREMENT OF BOTH THE DESIGN AND THE CONSTRUCTION OF A TRANSPORTATION PROJECT IN A SINGLE CONTRACT WITH A SINGLE DESIGN-BUILD FIRM OR A COMBINATION OF SUCH FIRMS THAT ARE CAPABLE OF PROVIDING THE NECESSARY DESIGN AND CONSTRUCTION SERVICES.

(4) "DESIGN-BUILD FIRM" MEANS ANY COMPANY, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION, JOINT VENTURE, OR OTHER ENTITY PERMITTED BY LAW TO PRACTICE ENGINEERING, ARCHITECTURE, OR CONSTRUCTION CONTRACTING IN THE STATE OF COLORADO.

(5) "TRANSPORTATION PROJECT" MEANS ANY PROJECT THAT THE DEPARTMENT IS AUTHORIZED BY LAW TO UNDERTAKE INCLUDING BUT NOT LIMITED TO A HIGHWAY, TOLLWAY, BRIDGE, MASS TRANSIT, INTELLIGENT TRANSPORTATION SYSTEM, TRAFFIC MANAGEMENT, TRAVELER INFORMATION SERVICES, OR ANY OTHER PROJECT FOR TRANSPORTATION PURPOSES.

43-1-1403. Authority to use a design-build contract

process. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE DEPARTMENT MAY SELECT A DESIGN-BUILD FIRM AND AWARD A DESIGN-BUILD CONTRACT FOR A TRANSPORTATION PROJECT AS PROVIDED IN THIS PART 14. THE DEPARTMENT MAY INCLUDE A WARRANTY PROVISION IN ANY DESIGN-BUILD CONTRACT THAT REQUIRES THE DESIGN-BUILD FIRM TO PERFORM MAINTENANCE SERVICES ON THE COMPLETED TRANSPORTATION PROJECT.

43-1-1404. Criteria. (1) THE DEPARTMENT MAY USE A DESIGN-BUILD CONTRACT FOR A TRANSPORTATION PROJECT IF THE DESIGN WORK FOR SUCH PROJECT MUST BE PERFORMED BEFORE A POTENTIAL BIDDER CAN DEVELOP A PRICE OR COST PROPOSAL FOR SUCH PROJECT AND IF THE CHIEF ENGINEER OF THE ENGINEERING, DESIGN, AND CONSTRUCTION DIVISION DETERMINES THAT USING A DESIGN-BUILD CONTRACT IS APPROPRIATE. THE CHIEF ENGINEER SHALL CONSIDER THE FOLLOWING FACTORS IN MAKING A DETERMINATION PURSUANT TO THIS SUBSECTION (1):

- (a) THE EXTENT TO WHICH THE TRANSPORTATION PROJECT REQUIREMENTS ARE ADEQUATELY DEFINED;
- (b) THE TIME CONSTRAINTS FOR COMPLETING THE TRANSPORTATION PROJECT;
- (c) THE CAPABILITY AND EXPERIENCE OF POTENTIAL DESIGN-BUILD FIRMS;
- (d) THE SUITABILITY OF THE TRANSPORTATION PROJECT TO A DESIGN-BUILD CONTRACT; AND
- (e) THE CAPABILITY OF THE DEPARTMENT TO MANAGE THE DESIGN-BUILD CONTRACT.

(2) THE DEPARTMENT MAY USE A DESIGN-BUILD CONTRACT REGARDLESS OF THE ESTIMATED MINIMUM OR MAXIMUM COST OF A TRANSPORTATION PROJECT.

43-1-1405. Public notice procedures. AT LEAST FORTY-FIVE DAYS PRIOR TO THE ANTICIPATED DATE OF SELECTING A DESIGN-BUILD FIRM FOR A TRANSPORTATION PROJECT, THE DEPARTMENT SHALL PUBLISH A PUBLIC NOTICE AT LEAST TWICE IN ONE OR MORE DAILY NEWSPAPERS OF GENERAL CIRCULATION IN THE STATE. THE PUBLIC NOTICE SHALL SET FORTH A GENERAL DESCRIPTION OF THE TRANSPORTATION PROJECT.

43-1-1406. General procedures. (1) THE DEPARTMENT SHALL DESCRIBE IN THE SPECIFICATIONS FOR THE TRANSPORTATION PROJECT THE PARTICULAR DESIGN-BUILD CONTRACT AND SELECTION PROCEDURES TO BE USED IN AWARDING SUCH CONTRACT, INCLUDING BUT ARE NOT LIMITED TO THE FOLLOWING:

- (a) A SCOPE OF WORK STATEMENT THAT DEFINES THE TRANSPORTATION PROJECT AND PROVIDES PROSPECTIVE DESIGN-BUILD FIRMS WITH SUFFICIENT INFORMATION REGARDING THE DEPARTMENT'S REQUIREMENTS FOR THE TRANSPORTATION PROJECT;
- (b) IF THE DEPARTMENT USES AN ADJUSTED SCORE DESIGN-BUILD CONTRACT PROCESS TO SELECT A DESIGN-BUILD FIRM, A SCOPE OF WORK STATEMENT THAT IS FLEXIBLE AND THAT IDENTIFIES THE END RESULT THAT THE DEPARTMENT WANTS TO ACHIEVE. THE DEPARTMENT MAY DETERMINE THE ADJUSTMENT FACTORS AND METHODS IT WILL USE TO ADJUST SCORES AND SHALL STATE SUCH FACTORS AND

METHODS IN THE SPECIFICATIONS FOR THE TRANSPORTATION PROJECT. THE DEPARTMENT MAY ALSO PROVIDE A GENERAL CONCEPT OF THE TRANSPORTATION PROJECT TO POTENTIAL DESIGN-BUILD FIRMS. ADJUSTED SCORE DESIGN-BUILD PROCEDURES SHALL CONSIST OF THE FOLLOWING TWO PHASES:

(I) IN THE FIRST PHASE, THE DEPARTMENT SHALL ISSUE A REQUEST FOR QUALIFICATIONS WITHIN THE TIME SPECIFIED IN SECTION 43-1-1405 TO SOLICIT PROPOSALS THAT INCLUDE INFORMATION ON THE DESIGN-BUILD FIRM'S QUALIFICATIONS AND ITS TECHNICAL APPROACH TO THE PROPOSED TRANSPORTATION PROJECT. THE DEPARTMENT SHALL INCLUDE APPROPRIATE EVALUATION FACTORS IN THE REQUEST FOR QUALIFICATIONS, INCLUDING THE FACTORS SET FORTH IN SECTION 24-30-1403 (2), C.R.S. THE DEPARTMENT SHALL NOT INCLUDE COST-RELATED OR PRICE-RELATED FACTORS IN THE REQUEST FOR QUALIFICATIONS. IN ACCORDANCE WITH THE TIME REQUIREMENTS SPECIFIED IN THE DEPARTMENT'S RULES, THE DEPARTMENT SHALL DEVELOP A SHORT LIST OF THE HIGHEST QUALIFIED DESIGN-BUILD FIRMS FROM THE PROPOSALS SUBMITTED IN RESPONSE TO THE REQUEST FOR QUALIFICATIONS.

(II) IN THE SECOND PHASE, THE DEPARTMENT SHALL ISSUE A REQUEST FOR PROPOSALS TO THE DESIGN-BUILD FIRMS INCLUDED ON THE SHORT LIST DEVELOPED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) IN ACCORDANCE WITH THE TIME REQUIREMENTS SPECIFIED IN THE DEPARTMENT'S RULES. THE REQUEST FOR PROPOSALS SHALL INCLUDE:

(A) A REQUEST TO SEPARATELY SUBMIT A SEALED TECHNICAL PROPOSAL AND A SEALED COST PROPOSAL FOR THE TRANSPORTATION PROJECT;

(B) THE REQUIRED CONTENT OF THE TECHNICAL PROPOSAL TO BE SUBMITTED BY THE DESIGN-BUILD FIRM, INCLUDING DESIGN CONCEPTS FOR THE TRANSPORTATION PROJECT, THE PROPOSED SOLUTIONS TO THE REQUIREMENTS ADDRESSED IN THE DEPARTMENT'S SCOPE OF WORK STATEMENT, OR BOTH;

(C) ANY OTHER EVALUATION FACTORS THE DEPARTMENT CONSIDERS APPROPRIATE, INCLUDING THE ESTIMATED COST OF THE TRANSPORTATION PROJECT; AND

(D) ANY FORMULA THE DEPARTMENT DETERMINES IS APPROPRIATE TO ADJUST THE TOTAL SCORE OF A DESIGN-BUILD FIRM'S PROPOSAL.

(2) EXCEPT AS PROVIDED IN THIS SUBSECTION (2), THE DEPARTMENT SHALL ALLOW THE PREFERENCE TO COLORADO RESIDENTS PROVIDED IN SECTION 8-19-101, C.R.S., IN AWARDING AN ADJUSTED SCORE DESIGN-BUILD CONTRACT PURSUANT TO THIS PART 14. IN EVALUATING AND SELECTING A PROPOSAL FOR A DESIGN-BUILD CONTRACT UNDER THIS PART 14, THE DEPARTMENT SHALL ASSIGN GREATER VALUE TO A PROPOSAL IN PROPORTION TO THE EXTENT SUCH PROPOSAL COMMITS TO USING COLORADO RESIDENTS TO PERFORM WORK ON THE TRANSPORTATION PROJECT. IF, HOWEVER, THE DEPARTMENT DETERMINES THAT COMPLIANCE WITH THIS SUBSECTION (2) MAY CAUSE THE DENIAL OF FEDERAL MONEYS THAT WOULD OTHERWISE BE AVAILABLE FOR THE TRANSPORTATION PROJECT OR IF SUCH COMPLIANCE WOULD OTHERWISE BE INCONSISTENT WITH THE REQUIREMENTS OF FEDERAL LAW, THE DEPARTMENT SHALL SUSPEND THE PREFERENCE GRANTED UNDER THIS SUBSECTION (2) ONLY TO THE EXTENT NECESSARY TO PREVENT DENIAL OF FEDERAL MONEYS OR TO

ELIMINATE THE INCONSISTENCY WITH FEDERAL LAW.

(3) THE DEPARTMENT MAY USE ANY BASIS FOR AWARDING A DESIGN-BUILD CONTRACT PURSUANT TO THIS PART 14 THAT IT DEEMS APPROPRIATE SO LONG AS THE BASIS FOR AWARDING SUCH CONTRACT IS ADEQUATELY DESCRIBED IN THE SPECIFICATIONS FOR THE TRANSPORTATION PROJECT OR THE REQUEST FOR PROPOSALS. SUCH BASIS MAY INCLUDE AWARDING A CONTRACT TO THE DESIGN-BUILD FIRM WHOSE PROPOSAL PROVIDES THE BEST VALUE TO THE DEPARTMENT.

(4) THE DEPARTMENT MAY CANCEL ANY REQUEST FOR QUALIFICATIONS, REQUEST FOR PROPOSALS, OR OTHER SOLICITATION ISSUED PURSUANT TO THIS PART 14 OR MAY REJECT ANY OR ALL PROPOSALS IN WHOLE OR IN PART WHEN THE DEPARTMENT DETERMINES THAT SUCH CANCELLATION OR REJECTION IS IN THE BEST INTEREST OF THE DEPARTMENT.

(5) IF THE DEPARTMENT AWARDS A DESIGN-BUILD CONTRACT PURSUANT TO THIS PART 14, THE DEPARTMENT SHALL EXECUTE A DESIGN-BUILD CONTRACT WITH THE SUCCESSFUL DESIGN-BUILD FIRM AND SHALL GIVE NOTICE TO SAID FIRM TO COMMENCE WORK ON THE TRANSPORTATION PROJECT.

43-1-1407. Stipulated fee. AT ITS DISCRETION, THE DEPARTMENT MAY AWARD A STIPULATED FEE TO THE DESIGN-BUILD FIRMS THAT SUBMIT RESPONSIVE PROPOSALS BUT THAT ARE NOT AWARDED THE DESIGN-BUILD CONTRACT FOR A TRANSPORTATION PROJECT. THE DEPARTMENT SHALL NOT BE REQUIRED TO AWARD SUCH STIPULATED FEE, BUT IF IT ELECTS TO AWARD SUCH FEE FOR A TRANSPORTATION PROJECT, THE DEPARTMENT SHALL IDENTIFY THE AVAILABILITY AND THE AMOUNT OF SUCH FEE IN ITS REQUEST FOR PROPOSALS.

43-1-1408. Commission approval required. THE DEPARTMENT SHALL OBTAIN APPROVAL FROM THE TRANSPORTATION COMMISSION PRIOR TO USING AN ADJUSTED SCORE DESIGN-BUILD CONTRACT PROCESS FOR ANY TRANSPORTATION PROJECT.

43-1-1409. Rule-making authority. THE DEPARTMENT MAY ADOPT RULES IN ACCORDANCE WITH SECTIONS 43-1-110 AND 24-4-103, C.R.S., TO ESTABLISH REQUIREMENTS FOR THE PROCUREMENT OF DESIGN-BUILD CONTRACTS THAT IT DETERMINES NECESSARY OR APPROPRIATE, INCLUDING BUT NOT LIMITED TO RULES IMPLEMENTING THE DESIGN-BUILD SELECTION AND CONTRACT PROCEDURES, SUBCONTRACTING, AND THE WARRANTY PROVISIONS OF THIS PART 14.

SECTION 2. 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: April 9, 1999