

CHAPTER 291

GOVERNMENT - STATE

SENATE BILL 07-228

BY SENATOR(S) Groff, and Fitz-Gerald;
 also REPRESENTATIVE(S) Garcia, Butcher, Carroll M., Casso, Cerbo, Hodge, Labuda, Madden, McFadyen, Merrifield,
 Primavera, and Soper.

AN ACT

CONCERNING THE MONITORING OF VENDOR PERFORMANCE ON STATE CONTRACTS, AND, IN CONNECTION THEREWITH, REQUIRING THE SUBMISSION OF INFORMATION ON THE USE OF PERSONAL SERVICES AND SOLE-SOURCE CONTRACTS BY STATE AGENCIES, REQUIRING THE EXISTING STATE DATABASE OF PROSPECTIVE VENDORS TO INCLUDE INFORMATION CONCERNING VENDOR PERFORMANCE, REQUIRING THE DISCLOSURE OF STATE CONTRACT WORK TO BE PERFORMED OUTSIDE THE STATE, ESTABLISHING PROCEDURES FOR MONITORING VENDOR PERFORMANCE, AUTHORIZING THE STATE TO PURSUE SPECIFIED REMEDIES FOR VENDOR NONPERFORMANCE, AND MAKING AN APPROPRIATION.

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

SECTION 1. Part 2 of article 102 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

24-102-205. Centralized contract management system - personal services contracts - legislative declaration - definitions. (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT BY ENACTING THIS SECTION THE GENERAL ASSEMBLY INTENDS TO:

(I) ESTABLISH A POLICY OF OPEN COMPETITION FOR PERSONAL SERVICES CONTRACTS UNLESS THE COMPETITION IS SPECIFICALLY EXEMPTED UNDER THIS SECTION;

(II) PROVIDE FOR LEGISLATIVE AND EXECUTIVE REVIEW OF ALL PERSONAL SERVICES CONTRACTS ENTERED INTO BY ANY GOVERNMENTAL BODY;

(III) CENTRALIZE THE LOCATION OF INFORMATION ABOUT PERSONAL SERVICES CONTRACTS FOR THE PURPOSE OF FACILITATING PUBLIC REVIEW OF SUCH CONTRACTS; AND

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

(IV) ENSURE THE PROPER ACCOUNTING OF EXPENDITURES FOR PERSONAL SERVICES.

(b) FOR PURPOSES OF THIS SECTION, "GOVERNMENTAL BODY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-101-301 (10); EXCEPT THAT, FOR PURPOSES OF THIS SECTION, "GOVERNMENTAL BODY" SHALL ALSO INCLUDE ELECTED OFFICIALS, THE GOVERNING BOARD OF EACH INSTITUTION OF HIGHER EDUCATION, AND THE COLORADO COMMISSION ON HIGHER EDUCATION.

(c) INsofar AS A CONFLICT EXISTS BETWEEN THE DEFINITION GIVEN A PARTICULAR TERM AFFECTING A PERSONAL SERVICES CONTRACT BY THE DEPARTMENT ACTING PURSUANT TO THIS CODE OR ANY RULES PROMULGATED THEREUNDER AND THE DEFINITION GIVEN A TERM BY AN INSTITUTION OF HIGHER EDUCATION, THE MEANING GIVEN THE TERM BY THE DEPARTMENT SHALL CONTROL.

(2) THIS SECTION SHALL APPLY TO ANY PERSONAL SERVICES CONTRACT TO WHICH THE STATE IS A PARTY THE VALUE OF WHICH EXCEEDS ONE HUNDRED THOUSAND DOLLARS WITH THE EXCEPTION OF ANY CONTRACT TO WHICH THE STATE IS A PARTY UNDER MEDICARE, THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., THE "CHILDREN'S BASIC HEALTH PLAN ACT", ARTICLE 8 OF TITLE 25.5, C.R.S., THE "COLORADO INDIGENT CARE PROGRAM", PART 1 OF ARTICLE 3 OF TITLE 25.5, C.R.S., OR TO ANY GRANT, AWARD, OR CONTRACT FUNDED BY ANY FEDERAL OR PRIVATE ENTITY FOR ANY RESEARCH OR SPONSORED PROJECT ACTIVITY OF AN INSTITUTION OF HIGHER EDUCATION OR AN AFFILIATE OF AN INSTITUTION OF HIGHER EDUCATION THAT IS FUNDED FROM MONEYS THAT ARE RESTRICTED BY THE ENTITY UNDER THE GRANT, AWARD, OR CONTRACT. FOR PURPOSES OF THIS SECTION, "SPONSORED PROJECT" MEANS AN AGREEMENT BETWEEN AN INSTITUTION OF HIGHER EDUCATION AND ANOTHER PARTY THAT PROVIDES RESTRICTED FUNDING AND REQUIRES OVERSIGHT RESPONSIBILITIES FOR RESEARCH AND DEVELOPMENT OR OTHER SPECIFIED PROGRAMMATIC ACTIVITIES THAT ARE SPONSORED BY FEDERAL OR PRIVATE AGENCIES AND ORGANIZATIONS.

(3) (a) ON OR BEFORE JUNE 30, 2009, THE DEPARTMENT SHALL IMPLEMENT AND MAINTAIN A CENTRALIZED CONTRACT MANAGEMENT SYSTEM FOR THE PURPOSE OF MONITORING ALL PERSONAL SERVICES CONTRACTS ENTERED INTO BY A GOVERNMENTAL BODY THAT ARE SUBJECT TO THE REQUIREMENTS OF THIS SECTION. WITH RESPECT TO EACH CONTRACT ENTERED INTO BY A GOVERNMENTAL BODY, INFORMATION CONTAINED IN THE SYSTEM SHALL INCLUDE, WITHOUT LIMITATION, THE FOLLOWING:

(I) THE GOVERNMENTAL BODY THAT ENTERED INTO THE PERSONAL SERVICES CONTRACT;

(II) THE PERSONS OR ENTITIES WITH WHICH THE GOVERNMENTAL BODY IS CONTRACTING;

(III) THE DURATION AND NUMBER OF POSITIONS ON THE STATE PAYROLL CREATED DIRECTLY OR INDIRECTLY AS A RESULT OF ANY PERSONAL SERVICES CONTRACT;

(IV) THE PURPOSE OF THE PERSONAL SERVICES CONTRACT;

(V) THE EFFECTIVE DATES, PERIODS OF PERFORMANCE, AND ANY RENEWAL TERMS OF THE PERSONAL SERVICES CONTRACT;

(VI) THE VENDOR SELECTION METHOD UPON WHICH THE PERSONAL SERVICES CONTRACT WAS AWARDED, WHETHER COMPETITIVELY PROCURED, AWARDED ON A SOLE-SOURCE BASIS, OR OTHERWISE. WHERE THE CONTRACT HAS BEEN AWARDED ON A SOLE-SOURCE BASIS, THE GOVERNMENTAL BODY SHALL CERTIFY THAT THE GOVERNMENTAL BODY HAS FOLLOWED THE REQUIREMENTS OF SUBSECTION (5) OF THIS SECTION.

(VII) THE TOTAL VALUE OF THE PERSONAL SERVICES CONTRACT AND ANY AMENDMENTS TO THE CONTRACT;

(VIII) IN ACCORDANCE WITH THE REQUIREMENTS OF SUBSECTION (6) OF THIS SECTION, AN EVALUATION FOLLOWING COMPLETION OF THE PERSONAL SERVICES CONTRACT THAT MEASURES THE VENDOR'S PERFORMANCE IN MEETING CONTRACTUAL REQUIREMENTS RELATING TO QUALITY, COST, AND DEADLINES;

(IX) WHETHER ANY SERVICES UNDER THE PERSONAL SERVICES CONTRACT, OR ANY SUBCONTRACTS TO THE CONTRACT THAT DIRECTLY RELATE TO THE SERVICES PROVIDED UNDER THE CONTRACT, ARE ANTICIPATED TO BE PERFORMED OUTSIDE THE UNITED STATES OR THE STATE AS DISCLOSED IN THE STATEMENT OF WORK PURSUANT TO SECTION 24-102-206 AND THE VENDOR'S JUSTIFICATION FOR OBTAINING SERVICES OUTSIDE THE UNITED STATES OR THE STATE IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 24-102-206; AND

(X) UPON COMPLETION OF THE PERSONAL SERVICES CONTRACT, THE EXTENT AS DISCLOSED BY THE VENDOR TO WHICH ANY SERVICES UNDER THE CONTRACT, OR ANY SUBCONTRACTS TO THE CONTRACT THAT DIRECTLY RELATE TO THE SERVICES PROVIDED UNDER THE CONTRACT, WERE PERFORMED OUTSIDE THE UNITED STATES OR THE STATE.

(b) EACH GOVERNMENTAL BODY SHALL BE RESPONSIBLE FOR GATHERING RELEVANT INFORMATION TO BE SUBMITTED TO THE DEPARTMENT FOR INCLUSION IN THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM IN ACCORDANCE WITH THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (3).

(c) THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL BE A PUBLICLY AVAILABLE DATABASE OF ALL PERSONAL SERVICES CONTRACTS ENTERED INTO BY ANY GOVERNMENTAL BODY, ACCESSIBLE FROM THE WEBSITE MAINTAINED BY THE STATE. INFORMATION CONCERNING CONTRACTS CONTAINED IN THE DATABASE AND ACCESSIBLE ON THE WEBSITE SHALL BE SEARCHABLE BY CRITERIA ENUMERATED IN SUBPARAGRAPHS (I) TO (X) OF PARAGRAPH (a) OF THIS SUBSECTION (3). INFORMATION IN THE DATABASE SHALL BE EITHER PRESENTED IN PLAIN AND NONTECHNICAL LANGUAGE OR BY MEANS OF KEY TERMS THAT ARE CLEARLY AND EASILY DEFINED.

(d) THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL IDENTIFY THE NUMBER OF EMPLOYMENT POSITIONS TO BE

FILLED UNDER ANY PERSONAL SERVICES CONTRACT THAT WAS PREVIOUSLY PERFORMED BY CLASSIFIED CIVIL SERVICE EMPLOYEES, IN ADDITION TO THE TOTAL NUMBER OF POSITIONS, IF ANY, ELIMINATED BY THE CONTRACT. IN THE CASE OF ANY CONTRACT THAT IS MORE THAN ONE YEAR IN DURATION, THE SYSTEM SHALL IDENTIFY THE COST SAVINGS, IF ANY, AND QUALITY IMPROVEMENTS, IF ANY, REALIZED BY THE STATE AS A RESULT OF THE CONTRACT.

(e) ANY NEW PERSONAL SERVICES CONTRACTS SUBJECT TO THE REQUIREMENTS OF THIS SECTION SHALL BE ADDED TO THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) NOT MORE THAN THIRTY DAYS AFTER THE EXECUTION OF THE CONTRACT.

(4) THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION SHALL INCLUDE INFORMATION CONCERNING PERSONAL SERVICES EXPENDITURES BY THE GOVERNMENTAL BODY AND TYPES OF SERVICES. THE TYPES OF SERVICES THAT MAY BE DESIGNATED SHALL INCLUDE, WITHOUT LIMITATION, PROFESSIONAL TECHNICAL, NONPROFESSIONAL SUPPORT, PURCHASED SERVICES, ARCHITECTURAL, ENGINEERING AND CONSTRUCTION TRADES, AND PROFESSIONAL EQUIPMENT REPAIR.

(5) (a) SUBJECT TO THE PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (5), PRIOR TO ENTERING INTO A SOLE-SOURCE PERSONAL SERVICES CONTRACT, THE GOVERNMENTAL BODY SHALL ATTEMPT TO IDENTIFY COMPETING VENDORS BY PLACING A NOTICE ON THE STATE'S BID NOTIFICATION WEBSITE FOR NOT LESS THAN THREE BUSINESS DAYS. IF THE GOVERNMENTAL BODY RECEIVES NOT LESS THAN TWO RESPONSES TO THE NOTICE FROM QUALIFIED AND RESPONSIBLE VENDORS THAT ARE ABLE TO MEET THE SPECIFICATIONS IDENTIFIED IN THE NOTICE AND THAT ARE NOT OTHERWISE PROHIBITED FROM BIDDING ON THE CONTRACT, THE SOLE-SOURCE SELECTION METHOD SHALL NOT BE USED.

(b) NOTWITHSTANDING THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (5), THE DIRECTOR OF A GOVERNMENTAL BODY OR HIS OR HER DESIGNEE MAY ENTER INTO OR AUTHORIZE OTHERS TO ENTER INTO AN EMERGENCY SOLE-SOURCE PERSONAL SERVICE CONTRACT ON BEHALF OF THE GOVERNMENTAL BODY WHERE AN EMERGENCY CONDITION IS PRESENT AND A SOLE-SOURCE PERSONAL SERVICE CONTRACT IS NECESSARY TO ENSURE THAT THE REQUIRED SERVICES ARE OBTAINED IN SUFFICIENT TIME TO ADDRESS THE EMERGENCY. WHERE THE GOVERNMENTAL BODY ENTERS INTO AN EMERGENCY SOLE-SOURCE PERSONAL SERVICE CONTRACT PURSUANT TO THIS PARAGRAPH (b), THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED BY PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, AND ANY CONTRACT FILE MAINTAINED THEREUNDER, SHALL INCLUDE A WRITTEN DETERMINATION THAT SPECIFIES THE BASIS FOR THE DETERMINATION THAT AN EMERGENCY CONDITION IS PRESENT AND THE BASIS FOR THE SELECTION OF THE VENDOR RETAINED TO PERFORM THE SOLE-SOURCE CONTRACT. A SOLE-SOURCE PERSONAL SERVICES CONTRACT AUTHORIZED PURSUANT TO THIS PARAGRAPH (b) SHALL BE LIMITED TO THE QUANTITY OF PERSONAL SERVICES AND DURATION NECESSARY TO ADDRESS THE EMERGENCY.

(c) FOR PURPOSES OF PARAGRAPH (b) OF THIS SUBSECTION (5), "EMERGENCY

CONDITION" MEANS A SITUATION THAT CREATES AN IMMINENT THREAT TO THE PUBLIC HEALTH, WELFARE, OR SAFETY AS MAY ARISE BY REASON OF, WITHOUT LIMITATION, A FLOOD, EPIDEMIC, RIOT, CATASTROPHIC EQUIPMENT FAILURE OR SIMILAR THREAT TO THE PUBLIC HEALTH, WELFARE, OR SAFETY AS DETERMINED BY THE DIRECTOR OF THE GOVERNMENTAL BODY OR HIS OR HER DESIGNEE.

(6) UPON THE COMPLETION OF EACH PERSONAL SERVICES CONTRACT, THE GOVERNMENTAL BODY THAT WAS A PARTY TO THE CONTRACT SHALL EVALUATE THE VENDOR THAT PERFORMED THE CONTRACT. THE EVALUATION PERFORMED BY THE GOVERNMENTAL BODY SHALL BE SUBMITTED TO THE VENDOR TO ALLOW THE VENDOR TO REVIEW THE EVALUATION AND TO SUBMIT ANY COMMENTS IN RESPONSE TO THE EVALUATION, AFTER WHICH POINT THE EVALUATION, INCLUDING ANY RESPONSE SUBMITTED BY THE VENDOR, SHALL BE ADDED TO THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION. THE EVALUATION SHALL BECOME PUBLICLY AVAILABLE THIRTY DAYS AFTER COMPLETION OF THE CONTRACT. THE EVALUATION SHALL MEASURE, WITHOUT LIMITATION, THE PERFORMANCE OF THE VENDOR IN MEETING CONTRACTUAL REQUIREMENTS RELATING TO QUALITY, COST, AND DEADLINES. IF THE VENDOR DISPUTES ANY INFORMATION CONTAINED IN THE EVALUATION, THE VENDOR MAY EXERCISE THE CONTRACT DISPUTE RIGHTS SPECIFIED IN SECTION 24-109-106, 24-109-107, 24-109-201, OR 24-109-202. IF, UPON COMPLETION OF AN APPEAL FILED WITH THE EXECUTIVE DIRECTOR OR THE DENVER DISTRICT COURT, AS APPLICABLE, THE VENDOR IS NOT SATISFIED WITH THE RESOLUTION OF THE APPEAL, THE VENDOR MAY FILE A REBUTTAL STATEMENT THAT SHALL BE MAINTAINED AS PART OF THE VENDOR EVALUATION RECORD. THE VENDOR'S SOLE REMEDY IN CONTESTING ANY EVALUATION SHALL BE REMOVAL OF THE EVALUATION, CORRECTION OF THE EVALUATION, OR SUBMISSION OF THE REBUTTAL STATEMENT IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (6).

(7) (a) COMMENCING ON SEPTEMBER 30, 2007, UNTIL SUCH TIME AS THE DEVELOPMENT OF THE SYSTEM CREATED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION IS COMPLETE, THE DEPARTMENT SHALL PROVIDE REPORTS ON A QUARTERLY BASIS TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY CONCERNING THE STATUS OF THE DEVELOPMENT OF THE SYSTEM.

(b) THE DEPARTMENT SHALL ANNUALLY REPORT INFORMATION ON PERSONAL SERVICES CONTRACTS CONTAINED IN THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM CREATED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION TO THE STANDING LEGISLATIVE COMMITTEES OF REFERENCE IN EACH HOUSE OF THE GENERAL ASSEMBLY WITH OVERSIGHT RESPONSIBILITIES OVER THE DEPARTMENT'S AFFAIRS.

(c) WITH RESPECT TO ANY SOLE-SOURCE PERSONAL SERVICES CONTRACT IDENTIFIED IN THE SYSTEM REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, THE DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT TO THE LEGISLATIVE COUNCIL OF THE GENERAL ASSEMBLY CREATED IN SECTION 2-3-301 (1), C.R.S., CONCERNING ANY NEW CONTRACT ENTERED INTO BY THE STATE DURING THE PRIOR CALENDAR YEAR. EACH REPORT SHALL DESCRIBE, WITHOUT LIMITATION, THE FOLLOWING:

(I) THE NUMBER AND AGGREGATE VALUE OF THE SOLE-SOURCE PERSONAL SERVICES CONTRACTS FOR EACH CATEGORY OF SERVICES SPECIFIED IN SUBSECTION (4) OF THIS SECTION; AND

(II) THE JUSTIFICATION PROVIDED BY THE GOVERNMENTAL BODY FOR THE USE OF THE SOLE-SOURCE CONTRACTING PROVISIONS IN SECTION 24-103-205 AND THE STEPS TAKEN TO DETERMINE IF A VENDOR IS THE ONLY AVAILABLE SOURCE FOR THE REQUIRED SUPPLY, SERVICE, OR CONSTRUCTION ITEM.

(8) THE IMPLEMENTATION OF THE DATABASE REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION SHALL BE FUNDED IN TWO PHASES, WITH A PORTION OF THE FUNDING PROVIDED IN THE 2007-08 STATE FISCAL YEAR, AND A PORTION OF THE FUNDING PROVIDED IN THE 2008-09 STATE FISCAL YEAR.

(9) TO ACCOMPLISH THE LEGISLATIVE INTENT UNDERLYING SUBPARAGRAPH (III) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, THE OFFICE OF CONTRACT ADMINISTRATION IS HEREBY CREATED IN THE DEPARTMENT, WHICH OFFICE SHALL BE FUNDED WITHIN EXISTING APPROPRIATIONS.

24-102-206. Contract performance outside the United States or Colorado.

(1) PRIOR TO CONTRACTING OR AS A REQUIREMENT FOR THE SOLICITATION OF ANY CONTRACT FROM THE STATE FOR SERVICES, AS APPROPRIATE, ANY PROSPECTIVE VENDOR SHALL DISCLOSE IN A STATEMENT OF WORK WHERE SERVICES WILL BE PERFORMED UNDER THE CONTRACT, INCLUDING ANY SUBCONTRACTS, AND WHETHER ANY SERVICES UNDER THE CONTRACT OR ANY SUBCONTRACTS ARE ANTICIPATED TO BE PERFORMED OUTSIDE THE UNITED STATES OR THE STATE. IF THE PROSPECTIVE VENDOR ANTICIPATES SERVICES UNDER THE CONTRACT OR ANY SUBCONTRACTS WILL BE PERFORMED OUTSIDE THE UNITED STATES OR THE STATE, THE VENDOR SHALL PROVIDE IN ITS STATEMENT OF WORK A PROVISION SETTING FORTH WHY IT IS NECESSARY OR ADVANTAGEOUS TO GO OUTSIDE THE UNITED STATES OR THE STATE TO PERFORM THE CONTRACT OR ANY SUBCONTRACTS.

(2) NOTHING IN SUBSECTION (1) OF THIS SECTION SHALL BE CONSTRUED TO APPLY TO ANY CONTRACT TO WHICH THE STATE IS A PARTY UNDER MEDICARE, THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., THE "CHILDREN'S BASIC HEALTH PLAN ACT", ARTICLE 8 OF TITLE 25.5, C.R.S., OR THE "COLORADO INDIGENT CARE PROGRAM", PART 1 OF ARTICLE 3 OF TITLE 25.5, C.R.S.

SECTION 2. 24-103-601, Colorado Revised Statutes, is amended to read:

24-103-601. Right to audit records. (1) ~~The state may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to section 24-103-403 to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books and records relating to such cost or pricing data for three years after the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.~~

(2) The state shall be entitled to audit the books and records of ~~a~~ ANY contractor or ~~any~~ subcontractor under any negotiated contract or subcontract ~~other than a firm fixed-price contract~~ to the extent that ~~such~~ THE books and records relate to the performance of ~~such~~ A STATE contract or subcontract, PROVIDED THAT THE STATE IS ABLE, IN CONDUCTING ANY SUCH AUDIT, TO MAINTAIN THE CONFIDENTIALITY OF ANY INFORMATION CONTAINED IN THE BOOKS AND RECORDS THAT IS DEEMED PROPRIETARY AS DETERMINED BY THE STATE. Such books and records shall be maintained by the contractor for a period of three years after the date of final payment under the prime contract and by the subcontractor for a period of three years after the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

SECTION 3. Title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 103.5
Contract Performance

24-103.5-101. Monitoring of vendor performance - definitions. (1) (a) FOR PURPOSES OF THIS SECTION, "GOVERNMENTAL BODY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-101-301 (10); EXCEPT THAT, FOR PURPOSES OF THIS SECTION, "GOVERNMENTAL BODY" SHALL ALSO INCLUDE ELECTED OFFICIALS, THE GOVERNING BOARD OF EACH INSTITUTION OF HIGHER EDUCATION, AND THE COLORADO COMMISSION ON HIGHER EDUCATION.

(b) INsofar AS A CONFLICT EXISTS BETWEEN THE DEFINITION GIVEN A PARTICULAR TERM AFFECTING A PERSONAL SERVICES CONTRACT BY THE DEPARTMENT ACTING PURSUANT TO THIS CODE OR ANY RULES PROMULGATED THEREUNDER AND THE DEFINITION GIVEN A TERM BY AN INSTITUTION OF HIGHER EDUCATION, THE MEANING GIVEN THE TERM BY THE DEPARTMENT SHALL CONTROL.

(2) EACH PERSONAL SERVICES CONTRACT ENTERED INTO PURSUANT TO THIS CODE WITH A VALUE OF ONE HUNDRED THOUSAND DOLLARS OR MORE SHALL CONTAIN:

(a) PERFORMANCE MEASURES AND STANDARDS DEVELOPED SPECIFICALLY FOR THE CONTRACT BY THE GOVERNMENTAL BODY ADMINISTERING THE CONTRACT. THE PERFORMANCE MEASURES AND STANDARDS SHALL BE NEGOTIATED BY THE GOVERNMENTAL BODY AND THE VENDOR PRIOR TO EXECUTION OF THE CONTRACT AND SHALL BE INCORPORATED INTO THE CONTRACT. THE MEASURES AND STANDARDS SHALL BE USED BY THE GOVERNMENTAL BODY TO EVALUATE THE PERFORMANCE OF THE GOVERNMENTAL BODY AND THE VENDOR UNDER THE CONTRACT.

(b) AN ACCOUNTABILITY SECTION THAT REQUIRES THE VENDOR TO REPORT REGULARLY ON ACHIEVEMENT OF THE PERFORMANCE MEASURES AND STANDARDS SPECIFIED IN THE CONTRACT AND THAT ALLOWS THE GOVERNMENTAL BODY TO WITHHOLD PAYMENT UNTIL SUCCESSFUL COMPLETION OF ALL OR PART OF THE CONTRACT AND THE ACHIEVEMENT OF ESTABLISHED PERFORMANCE STANDARDS. THE ACCOUNTABILITY SECTION SHALL INCLUDE A REQUIREMENT THAT PAYMENT BY THE GOVERNMENTAL BODY TO THE VENDOR SHALL BE MADE WITHOUT DELAY UPON SUCCESSFUL COMPLETION OF ALL OR ANY PART OF THE CONTRACT IN ACCORDANCE

WITH THE PAYMENT SCHEDULE SPECIFIED IN THE CONTRACT OR AS OTHERWISE AGREED UPON BY THE PARTIES.

(c) MONITORING REQUIREMENTS THAT SPECIFY HOW THE GOVERNMENTAL BODY AND THE VENDOR WILL EVALUATE EACH OTHERS' PERFORMANCE, INCLUDING PROGRESS REPORTS, SITE VISITS, INSPECTIONS, AND REVIEWS OF PERFORMANCE DATA. THE GOVERNMENTAL BODY SHALL USE ONE OR MORE MONITORING PROCESSES TO ENSURE THAT THE RESULTS, OBJECTIVES, AND OBLIGATIONS OF THE CONTRACT ARE MET.

(d) METHODS AND MECHANISMS TO RESOLVE ANY SITUATION IN WHICH THE GOVERNMENTAL BODY'S MONITORING ASSESSMENT DETERMINES NONCOMPLIANCE, INCLUDING TERMINATION OF THE CONTRACT.

(3) EACH GOVERNMENTAL BODY ADMINISTERING THE PERSONAL SERVICES CONTRACT SHALL, WITHIN EXISTING RESOURCES OF THE GOVERNMENTAL BODY, DESIGNATE AT LEAST ONE PERSON WITHIN THE GOVERNMENTAL BODY RESPONSIBLE FOR MONITORING WHETHER THE CRITERIA DESCRIBED IN SUBSECTION (2) OF THIS SECTION ARE MET, WHETHER AND TO WHAT EXTENT THE CONTRACT WAS COMPLETED ACCORDING TO THE PERFORMANCE SCHEDULE SPECIFIED IN THE CONTRACT, SATISFACTION OF THE SCOPE OF THE VENDOR'S WORK AS SPECIFIED IN THE CONTRACT, AND WHETHER AND TO WHAT EXTENT THE VENDOR MET OR EXCEEDED BUDGETARY REQUIREMENTS UNDER THE CONTRACT.

(4) BEFORE THE GOVERNMENTAL BODY MAY ENTER INTO A PERSONAL SERVICES CONTRACT, THE PERSON SELECTED IN SUBSECTION (3) OF THIS SECTION SHALL CERTIFY THAT THE PROPOSED PERFORMANCE MEASURES AND STANDARDS, DATA SOURCES, AND DATA COLLECTION METHODS PROVIDE A VALID BASIS FOR ASSESSING THE VENDOR'S PERFORMANCE.

(5) IN THE CASE OF A CONTRACT THAT HAS BEEN RENEWED IN A SUBSEQUENT FISCAL YEAR, THE GOVERNMENTAL BODY SHALL CERTIFY ANNUALLY WHETHER THE VENDOR ON ANY CONTRACT IS COMPLYING WITH THE TERMS OF THE CONTRACT. IF THE GOVERNMENTAL BODY DETERMINES THAT THE VENDOR HAS NOT COMPLIED WITH THE CONTRACT TERMS, INCLUDING BUT NOT LIMITED TO PERFORMANCE STANDARDS AND MEASURABLE OUTCOMES, THE STATE SHALL BE ENTITLED TO ANY REMEDY AVAILABLE UNDER LAW IN THE CASE OF CONTRACT NONPERFORMANCE, INCLUDING BUT NOT LIMITED TO TERMINATION OF THE CONTRACT AND THE RETURN OF ANY AND ALL PAYMENTS MADE TO THE VENDOR BY THE STATE UNDER THE CONTRACT; EXCEPT THAT THE RECOVERY OF ANY MONEYS BY THE STATE SHALL BE REDUCED BY THE VALUE OF ANY CONTRACTUAL BENEFITS REALIZED BY THE STATE FROM PARTIAL PERFORMANCE BY THE VENDOR UNDER THE CONTRACT. IF A VENDOR IS DEEMED TO BE IN DEFAULT UNDER ANY ONE PARTICULAR CONTRACT WITH THE STATE, THE STATE MAY, UPON A SHOWING OF GOOD CAUSE, DECLARE ANY OR ALL OTHER CONTRACTS IT HAS ENTERED INTO WITH THE VENDOR TO BE IN DEFAULT.

(6) THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED BY SECTION 24-102-205 (3) (a) SHALL INCLUDE SUCH INFORMATION AS WILL ALLOW THE EXECUTIVE DIRECTOR AND THE GOVERNMENTAL BODY TO EVALUATE THE PRIOR RECORD OF A PARTICULAR VENDOR IN MEETING PERFORMANCE MEASURES AND STANDARDS UNDER PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION IN

CONNECTION WITH A PERSONAL SERVICES CONTRACT TO WHICH IT HAS BEEN A PARTY. IF A PARTICULAR VENDOR DEMONSTRATES A GROSS FAILURE TO MEET SUCH PERFORMANCE MEASURES AND STANDARDS IN CONNECTION WITH ONE OR MORE CONTRACTS TO WHICH IT HAS BEEN A PARTY, THE EXECUTIVE DIRECTOR, UPON THE REQUEST OF AND WITH A SHOWING OF GOOD CAUSE BY A GOVERNMENTAL BODY, MAY REMOVE THE NAME OF THE VENDOR FROM THE DATABASE AND PROHIBIT THE VENDOR FROM BIDDING ON FUTURE CONTRACTS. UPON A SHOWING OF GOOD CAUSE BY A VENDOR OR GOVERNMENTAL BODY, THE EXECUTIVE DIRECTOR MAY REINSTATE THE NAME OF THE VENDOR TO THE DATABASE. IF A VENDOR DISPUTES THE REMOVAL OF ITS NAME FROM THE DATABASE OR THE PROHIBITION OF THE VENDOR FROM BIDDING ON FUTURE CONTRACTS, THE VENDOR MAY EXERCISE THE DEBARMENT PROTEST AND APPEAL RIGHTS SPECIFIED IN SECTION 24-109-105, 24-109-107, 24-109-201, OR 24-109-202. IF, UPON COMPLETION OF AN APPEAL FILED WITH THE EXECUTIVE DIRECTOR OR THE DENVER DISTRICT COURT, AS APPLICABLE, THE VENDOR IS NOT SATISFIED WITH THE RESOLUTION OF THE APPEAL, THE VENDOR MAY FILE A REBUTTAL STATEMENT THAT SHALL BE MAINTAINED AS PART OF THE VENDOR EVALUATION RECORD. THE VENDOR'S SOLE REMEDY IN CONTESTING SUCH REMOVAL OR PROHIBITION SHALL BE REVERSAL OF THE DEBARMENT OR SUBMISSION OF THE REBUTTAL STATEMENT IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (6).

(7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION:

(a) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO APPLY TO ANY CONTRACT TO WHICH THE STATE IS A PARTY UNDER MEDICARE, THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., THE "CHILDREN'S BASIC HEALTH PLAN ACT", ARTICLE 8 OF TITLE 25.5, C.R.S., THE "COLORADO INDIGENT CARE PROGRAM", PART 1 OF ARTICLE 3 OF TITLE 25.5, C.R.S., OR TO ANY GRANT, AWARD, OR CONTRACT FUNDED BY ANY FEDERAL OR PRIVATE ENTITY FOR ANY RESEARCH OR SPONSORED PROJECT ACTIVITY OF AN INSTITUTION OF HIGHER EDUCATION OR AN AFFILIATE OF AN INSTITUTION OF HIGHER EDUCATION THAT IS FUNDED FROM MONEYS THAT ARE RESTRICTED BY THE ENTITY UNDER THE GRANT, AWARD, OR CONTRACT. FOR PURPOSES OF THIS ARTICLE, "SPONSORED PROJECT" MEANS AN AGREEMENT BETWEEN AN INSTITUTION OF HIGHER EDUCATION AND ANOTHER PARTY THAT PROVIDES RESTRICTED FUNDING AND REQUIRES OVERSIGHT RESPONSIBILITIES FOR RESEARCH AND DEVELOPMENT OR OTHER SPECIFIED PROGRAMMATIC ACTIVITIES THAT ARE SPONSORED BY FEDERAL OR PRIVATE AGENCIES AND ORGANIZATIONS.

(b) THE PROVISIONS OF THIS SECTION SHALL NOT TAKE EFFECT UNTIL THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED BY SECTION 24-102-205 (3) (a) HAS BEEN IMPLEMENTED.

SECTION 4. Part 1 of article 105 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-105-102. Performance evaluation reports - definitions. (1) (a) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "GOVERNMENTAL BODY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-101-301 (10); EXCEPT THAT, FOR PURPOSES OF THIS SECTION,

"GOVERNMENTAL BODY" SHALL ALSO INCLUDE ELECTED OFFICIALS, THE GOVERNING BOARD OF EACH INSTITUTION OF HIGHER EDUCATION, AND THE COLORADO COMMISSION ON HIGHER EDUCATION.

(II) "REPORT" MEANS A CONTRACTOR PERFORMANCE EVALUATION REPORT REQUIRED BY THIS SECTION.

(b) IN SO FAR AS A CONFLICT EXISTS BETWEEN THE DEFINITION GIVEN A PARTICULAR TERM AFFECTING A PERSONAL SERVICES CONTRACT BY THE DEPARTMENT ACTING PURSUANT TO THIS CODE OR ANY RULES PROMULGATED THEREUNDER AND THE DEFINITION GIVEN A TERM BY AN INSTITUTION OF HIGHER EDUCATION, THE MEANING GIVEN THE TERM BY THE DEPARTMENT SHALL CONTROL.

(2) IN THE CASE OF EACH CONSTRUCTION CONTRACT WITH A VALUE OF FIVE HUNDRED THOUSAND DOLLARS OR MORE, THE GOVERNMENTAL BODY SHALL PREPARE, PRIOR TO COMPLETION OF THE CONTRACT, A CONTRACTOR PERFORMANCE EVALUATION REPORT, WHICH SHALL BE COMPLETED ON A FORM PROVIDED BY THE DEPARTMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE PROVISIONS OF THIS SECTION SHALL NOT TAKE EFFECT UNTIL THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED BY SECTION 24-102-205 (3) (a) HAS BEEN IMPLEMENTED.

(3) EACH REPORT SHALL EVALUATE THE CONTRACTOR'S PERFORMANCE ON A PARTICULAR PROJECT AND SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION:

(a) THE NAME OF THE GOVERNMENTAL BODY, THE NAME OF THE PARTICULAR PROJECT AND ANY APPLICABLE CONTRACT NUMBER, THE TYPE OF PROCUREMENT METHOD USED FOR AWARDED THE CONTRACT, AND THE NAME OF THE EMPLOYEE WITHIN THE GOVERNMENTAL BODY RESPONSIBLE FOR COMPLETING THE REPORT;

(b) THE INITIAL AMOUNT BUDGETED FOR COMPLETION OF THE CONTRACT AND THE FINAL AMOUNT PAID BY THE GOVERNMENTAL BODY UPON COMPLETION OF THE CONTRACT;

(c) THE INITIAL COMPLETION DATE AS SPECIFIED IN THE CONTRACT AND THE DATE ON WHICH THE CONTRACT WAS ACTUALLY COMPLETED;

(d) A NUMERICAL RATING THAT ASSESSES THE CONTRACTOR'S OVERALL QUALITATIVE PERFORMANCE IN CONNECTION WITH THE CONTRACT; AND

(e) A NUMERICAL RATING THAT ASSESSES THE CONTRACTOR'S OVERALL SAFETY PERFORMANCE IN CONNECTION WITH THE CONTRACT.

(4) EACH REPORT SHALL BE KEPT ON FILE BY THE GOVERNMENTAL BODY AND SHALL BE FORWARDED, WITHIN THIRTY DAYS OF THE DATE ON WHICH THE REPORT IS COMPLETED, TO A CENTRAL DATABASE MANAGED BY THE DEPARTMENT. EACH REPORT SHALL BE MAINTAINED IN THE DATABASE FOR AT LEAST FIVE YEARS AFTER BEING FORWARDED TO THE DATABASE.

(5) EACH GOVERNMENTAL BODY SHALL ESTABLISH APPROPRIATE PROCEDURES

TO ENSURE THAT EACH REPORT RELATING TO A PROSPECTIVE CONTRACTOR IS REVIEWED BY THE GOVERNMENTAL BODY PRIOR TO THE GOVERNMENTAL BODY MAKING ANY FUTURE CONTRACT AWARDS, REGARDLESS OF THE PROCUREMENT METHOD USED. THE REVIEW REQUIRED BY THIS SUBSECTION (5) SHALL BE UNDERTAKEN TO ENSURE THAT PROSPECTIVE CONTRACTORS MEET APPLICABLE CONTRACTOR RESPONSIBILITY STANDARDS AND TO ENABLE THE GOVERNMENTAL BODY TO ASSESS CONTRACTOR QUALIFICATIONS AND CAPABILITIES FOR PURPOSES OF COMPETITIVE BID EVALUATIONS.

(6) IF A VENDOR DISPUTES ANY INFORMATION CONTAINED IN A REPORT, THE VENDOR MAY EXERCISE THE CONTRACT RIGHTS SPECIFIED IN SECTION 24-109-106, 24-109-107, 24-109-201, OR 24-109-202. IF, UPON COMPLETION OF AN APPEAL FILED WITH THE EXECUTIVE DIRECTOR OR THE DENVER DISTRICT COURT, AS APPLICABLE, THE VENDOR IS NOT SATISFIED WITH THE RESOLUTION OF THE APPEAL, THE VENDOR MAY FILE, ON A FORM PREPARED BY THE DEPARTMENT, A REBUTTAL STATEMENT THAT SHALL BE MAINTAINED AS PART OF THE VENDOR EVALUATION RECORD. THE VENDOR'S SOLE REMEDY IN CONTESTING INFORMATION CONTAINED IN THE REPORT SHALL BE REMOVAL OF THE EVALUATION, CORRECTION OF THE EVALUATION, OR SUBMISSION OF THE REBUTTAL STATEMENT IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (6).

(7) THE REQUIREMENTS OF THIS SECTION SHALL BE IN ADDITION TO ANY REQUIREMENTS RELATING TO THE EVALUATION OF CONTRACT PERFORMANCE SPECIFIED IN SECTION 24-102-205 OR ARTICLE 103.5 OF THIS TITLE, OR OTHERWISE.

SECTION 5. Repeal. 24-50-510, Colorado Revised Statutes, is repealed.

SECTION 6. Appropriation - adjustments to 2007 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of personnel and administration, for the fiscal year beginning July 1, 2007, the sum of three hundred sixty-one thousand eight hundred ninety seven dollars (\$361,897) and 2.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, the appropriation made in section 21 of the annual general appropriation act for the fiscal year beginning July 1, 2007, shall be adjusted as follows: The general fund appropriation to the controlled maintenance trust fund is decreased by three hundred sixty-one thousand eight hundred ninety seven dollars (\$361,897).

SECTION 7. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 8, 2007, if adjournment sine die is on May 9, 2007); except that, if a referendum petition is

filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to contracts entered into on or after the applicable effective date of this act.

Approved: May 24, 2007