

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

**INTRODUCED**

LLS NO. 17-0673.01 Nicole Myers x4326

**HOUSE BILL 17-1051**

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**HOUSE SPONSORSHIP**

**Rankin and Garnett,**

**SENATE SPONSORSHIP**

**Coram and Kerr,**

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**House Committees**  
Business Affairs and Labor

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING MODERNIZATION OF THE COLORADO "PROCUREMENT**  
102      **CODE".**

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**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 Colorado "Procurement Code" (code) governs how executive branch agencies, other than institutions of higher education that have opted out of the code, buy goods and services. The code is administered by the department of personnel (department) and exists to help keep the public trust, promote fair competition, make efficient use of taxpayer dollars, and allow the state to effectively do the people's business. The

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

code has been amended many times over the years, but it has not been reviewed in total since the general assembly enacted it in 1982.

**General updates (Sections 5, 6, 9, 11, 13, 15 through 18, 21 through 23, 31, and 36).** The code is based on the 1979 American bar association model procurement code. When the state adopted the model code, much of the structure and terminology was adopted as drafted by the American bar association rather than conforming the structure and language to the Colorado Revised Statutes. The bill updates the terminology used in the code to make it consistent with common use, simplifies reporting requirements, and reorganizes provisions of the code for ease of use. In addition, the bill clarifies the authority of the executive director of the department to promulgate rules for the administration of the code.

**Promulgation of rules (Sections 8, 28, 32, 34, and 58).** The executive director of the department is currently required to promulgate rules in furtherance of the code. The bill makes promulgation of rules by the executive director of the department (executive director) permissive throughout the code and authorizes the director to delegate his or her authority to promulgate rules.

**Ethics (Sections 2 and 4).** State procurement professionals follow the "Procurement Code of Ethics and Guidelines" (guidelines), which were established by the Colorado procurement advisory council. The guidelines are often interpreted to apply only to procurement staff and not to other people involved in the procurement process. The bill clarifies that state procurement officials, end users, vendors and contractors, and interested third parties are required to adhere to ethical standards during all phases of the procurement process.

**Procurement training (Section 4).** The bill authorizes the chief procurement officer to develop and conduct a procurement education and training program for state employees and for vendors.

**Application of the code (Section 3).** Certain purchasing activities are currently exempt from the code, such as bridge and highway construction, the awarding of grants to political subdivisions, and procurement by institutions of higher education that have formally opted out of the code. The bill exempts the procurement of specified additional goods and services from the code.

**Grants (Sections 3 and 6).** Currently, the application, processing, and management of grants is inconsistent across state agencies. The bill amends the definition of "grant" to provide consistency and to comply with federal requirements including the office of management and budget uniform guidance.

**Multiyear contracts (Section 37).** Currently, the state may enter into a contract for any period as long as the contract term is included in the solicitation. If a contract term ultimately needs to exceed the period specified in the solicitation, the contract cannot be extended and a new

contract is required. The bill authorizes the state to extend an existing contract, with approval of the chief procurement officer, for a reasonable period if extenuating circumstances exist.

**Contract management system (Section 37).** The centralized contract management system and related requirements for contract provisions, monitoring, and reporting were established for the purpose of improving the state's contracting process. The bill repeals provisions related to contract monitoring and reporting and allows for remedies, including suspension or debarment, for contractors who do not perform.

**Contract terms and conditions (Section 38).** The process to negotiate vendor terms and conditions sometimes requires the state to agree to a requirement that the state indemnify the vendor and that the contract be governed by the vendor's choice of law rather than Colorado law. However, indemnification is in violation of the state constitution. The bill prohibits indemnification of vendors by the state and requires that state contracts be governed by Colorado law.

**Market research (Section 14).** A request for information (RFI) is a commonly used method for obtaining information about pending procurements and doing market research. Currently, RFIs are referenced in the procurement rules but not in the code. The bill establishes an RFI process in the code as a market assessment and information gathering tool and clarifies the appropriate methods to conduct market research.

**Administrative remedies (Sections 39 through 50).** The bill clarifies the administrative remedies provisions in the code and provides guidance regarding the remedies process. Specifically, the bill clarifies who may ratify a violation of the code, specifies when a stay will apply, authorizes the executive director to refer an appeal to the office of administrative courts, and states that only material issues may be appealed.

**Confidentiality and CORA (Sections 7 and 20).** Pursuant to current law, procurement records are public records, with some exceptions under the "Colorado Open Records Act". Procurement records, including bids and responses to RFIs, often contain information that is proprietary or confidential by the submitting entity. The bill clarifies that all responses to RFIs are confidential until after an award based on the RFI has been made or until the procurement official determines that the state will not pursue a solicitation based on the RFI. The bill also authorizes the executive director of the department to promulgate rules to clarify the process for classifying confidential or proprietary information.

**Procurement set asides, preferences, and goals (Sections 24 through 27).** Current law allows a set aside in state procurement for persons with severe disabilities. The bill streamlines the process by which state agencies and nonprofit agencies that employ people with severe disabilities may use the set aside program and authorizes the executive

director to promulgate rules for the administration of the program.

In addition, current law contains many procurement preferences and goals; however, these preferences and goals are located in various provisions of the code and in other provisions of the Colorado Revised Statutes. The various locations of these provisions, as well as inconsistent terminology in the preference and goal provisions, make it difficult for vendors and procurement officials to know how each preference and goal should be applied. The bill relocates currently existing procurement preferences and goals into a new part and makes the language of those provisions consistent where possible.

**Cooperative purchasing (Section 51).** Cooperative purchasing is procurement conducted by, with, or on behalf of more than one public procurement entity. It increases the opportunity for the state and local governments to obtain volume discounts through joint purchasing and it lowers the transaction costs of both purchasing agencies and vendors. The bill provides state agencies with more flexibility to use cooperative purchasing to increase efficiencies and maximize state resources.

**Conforming amendments (Sections 1, 10, 12, 19, 29, 30, 33, 35, 52 through 57, and 59 through 74).** The bill makes necessary conforming amendments.

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

2           **SECTION 1.** In Colorado Revised Statutes, **amend** 24-101-101  
3 as follows:

4           **24-101-101. Short title.** THE SHORT TITLE OF articles 101 to 112  
5 of this title ~~shall be known and may be cited as~~ TITLE 24 IS the  
6 "Procurement Code", referred to in said articles as the "code".

7           **SECTION 2.** In Colorado Revised Statutes, **amend** 24-101-104  
8 as follows:

9           **24-101-104. Requirement of good faith.** This code requires all  
10 parties involved in the PROCUREMENT OF ANY GOOD OR SERVICE OR IN THE  
11 negotiation, performance, or administration of ~~state contracts~~ ANY  
12 CONTRACT OR AGREEMENT FOR THOSE GOODS OR SERVICES to act in good  
13 faith.

14           **SECTION 3.** In Colorado Revised Statutes, **amend** 24-101-105

1 as follows:

2 **24-101-105. Application of this code.** (1) (a) This code shall  
3 apply to all publicly funded contracts entered into by all governmental  
4 bodies of the executive branch of this state; except that this code shall not  
5 apply to:

6 (I) ~~The procurement of~~ Bridge and highway construction or to  
7 contracts for unsolicited or comparable proposals for public-private  
8 initiatives under section 43-1-1203; ~~C.R.S.~~;

9 (II) ~~The awarding of grants to or the awarding of~~ Contracts  
10 between the state and its political subdivisions or other governments,  
11 except as provided in article 110 of this ~~title~~ TITLE 24;

12 (II.5) GRANTS;

13 (III) ~~The procurement of~~ Public printing, as defined in section  
14 24-70-201, except for the provisions of article 109 of this ~~title~~ TITLE 24;

15 (IV) ~~The procurement of~~ Professional services, as defined in  
16 section 24-30-1402;

17 (V) The Colorado state fair authority created pursuant to section  
18 35-65-401 (1); ~~C.R.S.~~;

19 (VI) The state board of land commissioners in connection with  
20 contract expenditures from the state board of land commissioners  
21 investment and development fund created in section 36-1-153 (1), ~~C.R.S.~~;  
22 or the commercial real property operating fund created in section  
23 36-1-153.7; ~~C.R.S.~~

24 (VII) Repealed.

25 (VIII) PUBLICLY REGULATED UTILITIES INCLUDING WATER,  
26 ELECTRICITY, NATURAL GAS, AND TELECOMMUNICATIONS;

27 (IX) FUEL;

1 (X) WORKS OF ART FOR DISPLAY, PURCHASE, OR PERFORMANCE;

2 (XI) COPYRIGHTED MATERIALS SUCH AS BOOKS, PERIODICALS,  
3 COLLECTIONS, AND SUBSCRIPTIONS;

4 (XII) CONFERENCE FACILITIES AT HOTELS OR OTHER VENUES THAT  
5 INCLUDE, BUT NEED NOT TO BE LIMITED TO, MEETING ROOMS, AUDIO  
6 VISUAL EQUIPMENT, CATERING, AND GUEST ACCOMMODATION ROOMS;

7 (XIII) CLIENT-BASED SERVICES INCLUDING MEDICAL SERVICES OR  
8 SERVICES WHERE THE CLIENT HAS THE RIGHT TO CHOOSE THE VENDOR;

9 (XIV) DUES AND MEMBERSHIPS;

10 (XV) ANNUITIES;

11 (XVI) LAND ONLY, LEASEHOLDS, AND RIGHTS-OF-WAY; AND

12 (XVII) SERVICES APPROVED BY THE ATTORNEY GENERAL THAT  
13 ARE OF A SPECIALIZED NATURE NEEDED TO SUPPORT CRIMINAL  
14 PROCEEDINGS, CIVIL ENFORCEMENT, OR LEGAL SERVICES.

15 (a.5) IF THE PROCUREMENT AGENT OF A GOVERNMENTAL BODY  
16 DETERMINES THAT REASONABLE COMPETITION EXISTS IN THE  
17 PROCUREMENT OF A GOOD OR SERVICE THAT IS EXEMPT FROM THE CODE  
18 PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE PROCUREMENT  
19 AGENT MAY REQUIRE A COMPETITIVE PROCUREMENT METHOD PURSUANT  
20 TO THIS CODE TO USE FOR THE PURPOSE OF THE PROCUREMENT.

21 (b) The governing board of each institution of higher education,  
22 including the Auraria higher education center established in article 70 of  
23 title 23, ~~C.R.S.~~, by formal action of the board, and the Colorado  
24 commission on higher education, by formal action of the commission,  
25 may elect to be exempt from the provisions of this code and may enter  
26 into contracts independent of the terms specified in this code.

27 (c) Repealed.

1           (d) ~~Except as provided in section 24-111-103,~~ This code shall also  
2 apply to contracts funded in whole or in part with federal assistance  
3 moneys; EXCEPT THAT, WHEN A PROCUREMENT INVOLVES THE  
4 EXPENDITURE OF FEDERAL ASSISTANCE OR CONTRACT FUNDS, THE  
5 EXECUTIVE DIRECTOR OR THE PROCUREMENT OFFICIAL SHALL COMPLY  
6 WITH THE APPROPRIATE FEDERAL LAW AND THE RULES AND REGULATIONS  
7 PROMULGATED PURSUANT TO SUCH LAW WHICH ARE MANDATORILY  
8 APPLICABLE. This code shall ALSO apply to the transfer or disposal of state  
9 supplies.

10           (e) Upon the request of ~~a governmental body purchasing~~ TO  
11 PURCHASE items for resale to the public, the ~~head of a purchasing agency~~  
12 PROCUREMENT OFFICIAL may, by written determination, provide that this  
13 code shall not apply to items acquired for such resale.

14           (f) Nothing in this code or in rules promulgated under this code  
15 shall prevent any governmental body or political subdivision from  
16 complying with the terms and conditions of any grant, gift, bequest, or  
17 cooperative agreement.

18           (g) UPON THE REQUEST TO ENTER INTO A REVENUE-PRODUCING  
19 CONTRACT, THE PROCUREMENT OFFICIAL MAY, BY WRITTEN  
20 DETERMINATION, PROVIDE THAT THIS CODE SHALL NOT APPLY TO THE  
21 REVENUE-PRODUCING CONTRACT. GOVERNMENTAL BODIES SHALL  
22 MAXIMIZE THE RETURN TO THE STATE WHEN THEY ARE PARTIES TO  
23 REVENUE-PRODUCING CONTRACTS.

24           (2) All political subdivisions and local public agencies of this state  
25 are authorized to adopt all or any part of this code and its accompanying  
26 rules.

27           (3) ~~The provisions of sections 8-18-101 and 8-18-103, C.R.S.,~~

1 ~~which require a preference for resident bidders and resident agricultural~~  
2 ~~products under certain circumstances, apply to the award of contracts~~  
3 ~~under this code.~~

4 (4) ~~The executive director of the department of human services~~  
5 ~~may procure the necessary services and support required to develop,~~  
6 ~~implement, and operate state and federal child support enforcement~~  
7 ~~welfare reform mandates which shall not be subject to this code. This~~  
8 ~~procurement shall be limited to funds specifically appropriated for child~~  
9 ~~support enforcement in fiscal year 1997-98 subject to available~~  
10 ~~appropriations for information technology hardware, software, and related~~  
11 ~~services.~~

12 **SECTION 4.** In Colorado Revised Statutes, **add** 24-101-106 and  
13 24-101-107 as follows:

14 **24-101-106. Procurement training.** THE CHIEF PROCUREMENT  
15 OFFICER, OR HIS OR HER DESIGNEE, MAY DEVELOP AND CONDUCT A  
16 PROCUREMENT EDUCATION AND TRAINING PROGRAM FOR EMPLOYEES OF  
17 GOVERNMENTAL BODIES AND FOR VENDORS.

18 **24-101-107. Procurement ethics.** ANY PERSON WHO IS EMPLOYED  
19 BY A GOVERNMENTAL BODY WHO PURCHASES GOODS OR SERVICES OR IS  
20 INVOLVED IN THE PURCHASING PROCESS FOR THE STATE, ANY END USERS  
21 OF SUCH GOODS AND SERVICES, ANY VENDOR OR CONTRACTOR THAT DOES  
22 BUSINESS WITH THE STATE, AND ANY OTHER INTERESTED THIRD PARTIES  
23 TO THE PROCUREMENT PROCESS SHALL ENHANCE THE PROFICIENCY AND  
24 STATURE OF THE PURCHASING PROCESS BY ADHERING TO THE HIGHEST  
25 STANDARDS OF ETHICAL BEHAVIOR.

26 **SECTION 5.** In Colorado Revised Statutes, **amend** 24-101-201  
27 as follows:



1           **24-101-201. Determinations.** Written determinations required by  
2 this code shall be retained in the appropriate official ~~contract~~  
3 PROCUREMENT file of the department of personnel or the purchasing  
4 agency administering the procurement.

5           **SECTION 6.** In Colorado Revised Statutes, **amend with**  
6 **relocated provisions** 24-101-301 as follows:

7           **24-101-301. Definitions.** The terms defined in this section shall  
8 have the following meanings whenever they appear in this code, unless  
9 the context in which they are used clearly requires a different meaning or  
10 a different definition is prescribed for a particular article or portion  
11 thereof:

12           (1) "ACCEPTANCE" MEANS THE ACTION OF CONSENTING TO  
13 RECEIVE OR UNDERTAKE SOMETHING OFFERED.

14           (2) "ADEQUATE COMPETITION" MEANS WHEN A REQUEST FOR  
15 PROPOSALS OR AN INVITATION FOR BIDS HAS BEEN CONDUCTED AND AT  
16 LEAST TWO RESPONSIBLE AND RESPONSIVE OFFERORS HAVE  
17 INDEPENDENTLY COMPETED TO PROVIDE THE STATE'S NEEDED PRODUCTS  
18 OR SERVICES. IF THE FOREGOING CONDITIONS ARE MET, PRICE  
19 COMPETITION SHALL BE PRESUMED TO BE ADEQUATE UNLESS THE  
20 PROCUREMENT AGENT DETERMINES, IN WRITING, THAT SUCH COMPETITION  
21 IS NOT ADEQUATE.

22           ~~(1) (3) "Award" means the acceptance of a bid or proposal and~~  
23 ~~may include the presentation of a proposed written agreement for~~  
24 ~~performance of the contract~~ SELECTION OF A BID OR PROPOSAL BY A  
25 GOVERNMENTAL BODY. AN AWARD DOES NOT MEAN THAT A CONTRACT  
26 HAS BEEN EXECUTED OR THAT A COMMITMENT VOUCHER HAS BEEN ISSUED  
27 PURSUANT TO SECTION 24-30-202 (2).

1 (4) "BIDDER" MEANS ANY ENTITY THAT SUBMITS A BID IN  
2 RESPONSE TO AN INVITATION FOR BIDS.

3 ~~(1.5)~~ (5) "Business" means any corporation, limited liability  
4 company, partnership, individual, sole proprietorship, joint-stock  
5 company, joint venture, or other private legal entity.

6 (6) "BUSINESS DAY" MEANS ANY DAY OTHER THAN SATURDAY,  
7 SUNDAY, OR A LEGAL HOLIDAY.

8 ~~(2)~~ "Change order" means a written order, signed by a  
9 procurement officer, directing the contractor to make changes which the  
10 changes clause of the contract authorizes the procurement officer to order  
11 without the consent of the contractor.

12 (7) "CHIEF PROCUREMENT OFFICER" MEANS THE INDIVIDUAL TO  
13 WHOM THE EXECUTIVE DIRECTOR HAS DELEGATED HIS OR HER AUTHORITY  
14 PURSUANT TO SECTION 24-102-202 TO PROCURE OR SUPERVISE THE  
15 PROCUREMENT OF ALL SUPPLIES AND SERVICES NEEDED BY THE STATE.

16 ~~(3)~~ (8) "Construction" means the process of building, altering,  
17 repairing, improving, or demolishing any public structure or building or  
18 any other public improvements of any kind to any public real property.  
19 For the purposes of this code, "construction" includes capital construction  
20 and controlled maintenance, as defined in section 24-30-1301.

21 (9) "CONTINGENCY-BASED CONTRACT" SHALL HAVE THE SAME  
22 MEANING AS SET FORTH IN SECTION 24-17-203 (1).

23 ~~(4)~~ (10) "Contract" means any type of state agreement, regardless  
24 of what it may be called for the procurement or disposal of supplies,  
25 services, or construction. "CONTRACT" INCLUDES COMMITMENT VOUCHERS  
26 AS DESCRIBED IN SECTION 24-30-202.

27 ~~(5)~~ (11) "Contract modification" means any written alteration of

1 ~~specifications, delivery point, rate of delivery, period of performance,~~  
2 ~~price, quantity, or other provision~~ of a contract accomplished by mutual  
3 action of the parties to the contract.

4 ~~(6)~~ (12) "Contractor" means any person having a contract with a  
5 governmental body. FOR THE PURPOSES OF THIS CODE, A VENDOR IS  
6 CONSIDERED A CONTRACTOR.

7 (13) [Formerly 24-110-101 (1)] "Cooperative purchasing" means  
8 procurement conducted by, or on behalf of, more than one public  
9 procurement unit or by a public procurement unit with an external  
10 procurement ~~activity~~ UNIT.

11 (14) [Formerly 24-103-101 (1)] "Cost-reimbursement contract"  
12 means a contract under which a contractor is reimbursed for costs which  
13 are allowable and allocable in accordance with the contract terms and the  
14 provisions of this code and a fee, if any.

15 ~~(7) Repealed.~~

16 ~~(8)~~ (15) "Department" means the department of personnel.

17 (16) [Formerly 24-103-101 (2)] "Established ~~catalogue~~ CATALOG  
18 price" means the price included in a ~~catalogue~~ CATALOG, price list,  
19 schedule, or other form that:

20 (a) Is regularly maintained by a manufacturer or contractor; ~~and~~

21 (b) Is either published or otherwise available for inspection by  
22 customers; and

23 (c) States prices at which sales are currently or were last made to  
24 a significant number of any category of buyers or buyers constituting the  
25 general buying public for the supplies or services involved.

26 ~~(9)~~ (17) "Executive director" means the executive director of the  
27 department of personnel.

1           (18) [**Formerly 24-110-101 (2)**] "External procurement activity  
2           UNIT" means any buying organization not located in this state which, if  
3           located in this state, would qualify as a public procurement unit. AN  
4           EXTERNAL PROCUREMENT UNIT INCLUDES ANY PURCHASING COOPERATIVE  
5           THAT SATISFIES THE PURPOSES OF THIS CODE AS SET FORTH IN SECTION  
6           24-101-102. An agency of the United States is an external procurement  
7           activity UNIT.

8           ~~(10)~~ (19) "Governmental body" means any department,  
9           commission, council, board, bureau, committee, institution of higher  
10          education, agency, government corporation, or other establishment or  
11          official, other than an elected official, of the executive branch of state  
12          government in this state; except that

13          (a) the governing board of each institution of higher education,  
14          including the Auraria higher education center established in article 70 of  
15          title 23, ~~C.R.S.~~, by formal action of the board, and the Colorado  
16          commission on higher education, by formal action of the commission,  
17          may elect to be excluded from the meaning of "governmental body".

18          ~~(b) (Deleted by amendment, L. 2010, (SB 10-111), ch. 170, p.~~  
19          ~~603, § 12, effective August 11, 2010.)~~

20          ~~(10.5)~~ (a) (20) "Grant" means ~~the furnishing of~~ A NONEXCHANGE  
21          TRANSACTION WHERE A GOVERNMENTAL BODY FURNISHES assistance,  
22          including financial or other means of assistance, ~~by the purchasing agency~~  
23          to any person to support a program authorized by law. A GRANT MAY  
24          INCLUDE A DISTRIBUTION OF FUNDS. IN A NONEXCHANGE TRANSACTION  
25          THE GRANTOR DOES NOT RECEIVE EQUAL VALUE FOR FUNDS TRANSFERRED  
26          TO THE GRANTEE.

27          ~~(b) The term "grant" does not include:~~

1           ~~(I) A loan;~~  
2           ~~(II) An award required by the terms of a grant to be awarded in~~  
3 ~~accordance with the purchasing agency's procurement statutes and~~  
4 ~~regulations; or~~  
5           ~~(III) An award whose primary purpose is to procure an end~~  
6 ~~product to satisfy a requirement of the purchasing agency, either in the~~  
7 ~~form of supplies, services, or construction.~~  
8           ~~(11) "Head of a purchasing agency" means the director of a~~  
9 ~~purchasing agency created pursuant to section 24-102-204 or 24-102-302~~  
10 ~~(2) and the principal representative authorized to enter into contracts for~~  
11 ~~capital construction or controlled maintenance pursuant to part 13 of~~  
12 ~~article 30 of this title.~~  
13           ~~(12) (21) "Invitation for bids" means all documents, whether~~  
14 ~~attached or incorporated by reference, utilized for soliciting bids.~~  
15 ~~INVITATION FOR BIDS IS THE COMMONLY USED TERM FOR SOLICITING~~  
16 ~~COMPETITIVE SEALED BIDS AND COMPETITIVE SEALED BEST VALUE BIDS.~~  
17           (22) "LEGAL HOLIDAY" INCLUDES THE FIRST DAY OF JANUARY,  
18 OBSERVED AS NEW YEAR'S DAY; THE THIRD MONDAY IN JANUARY,  
19 OBSERVED AS THE BIRTHDAY OF DR. MARTIN LUTHER KING, JR. DAY; THE  
20 THIRD MONDAY IN FEBRUARY, OBSERVED AS WASHINGTON-LINCOLN  
21 DAY; THE LAST MONDAY IN MAY, OBSERVED AS MEMORIAL DAY; THE  
22 FOURTH DAY OF JULY, OBSERVED AS INDEPENDENCE DAY; THE FIRST  
23 MONDAY IN SEPTEMBER, OBSERVED AS LABOR DAY; THE SECOND  
24 MONDAY IN OCTOBER, OBSERVED AS COLUMBUS DAY; THE ELEVENTH  
25 DAY OF NOVEMBER, OBSERVED AS VETERAN'S DAY; THE FOURTH  
26 THURSDAY IN NOVEMBER, OBSERVED AS THANKSGIVING DAY; AND THE  
27 TWENTY-FIFTH DAY OF DECEMBER, OBSERVED AS CHRISTMAS DAY.

1           (23) [Formerly 24-110-101 (3)] "Local public procurement unit"  
2 means any county, city, county and city, municipality, or other political  
3 subdivision of the state, any public agency of any such political  
4 subdivision, any public authority, any educational, health, or other  
5 institution, and, to the extent provided by law, any other entity which  
6 expends public funds for the procurement of supplies, services, and  
7 construction.

8           (24) [Formerly 24-103-101 (3)] "Low responsible bidder" means  
9 any person who has bid in compliance with the invitation ~~to bid~~ FOR BIDS  
10 and within the requirements of the plans and specifications for a public  
11 contract who is the low bidder and who has furnished bonds or their  
12 equivalent if required by law.

13           (25) [Formerly 24-103-101 (3.5)] "Low tie bids" means low  
14 responsible bids from bidders that are identical in amount and that meet  
15 all the requirements and criteria set forth in the invitation for bids  
16 pursuant to this code.

17           (26) "NONRESIDENT BIDDER" MEANS A BIDDER THAT DOES NOT  
18 SATISFY THE CRITERIA TO BE A RESIDENT BIDDER.

19           (27) "OFFEROR" MEANS ANY ENTITY THAT SUBMITS A PROPOSAL  
20 IN RESPONSE TO A REQUEST FOR PROPOSALS.

21           ~~(13)~~ (28) "Person" means any business, individual, union,  
22 committee, club, other organization, or group of individuals.

23           ~~(14)~~ (29) "Procurement" means buying, purchasing, renting,  
24 leasing, or otherwise acquiring any supplies, services, or construction.  
25 "Procurement" includes all functions that pertain to the obtaining of any  
26 supply, service, or construction, including description of requirements,  
27 selection and solicitation of sources, preparation and award of contract,

1 and all phases of contract administration. "PROCUREMENT" ALSO  
2 INCLUDES THE PROCUREMENT OF INFORMATION TECHNOLOGY AS DEFINED  
3 IN SECTION 24-37.5-102 (2).

4 ~~(15)~~ (30) "Procurement ~~officer~~ AGENT" means any person duly  
5 authorized to enter into and administer ~~contracts~~ PROCUREMENTS and  
6 make written determinations with respect thereto. "Procurement ~~officer~~  
7 AGENT" includes an authorized representative acting within the limits of  
8 his OR HER authority.

9 (31) "PROCUREMENT OFFICIAL" MEANS THE PRIMARY INDIVIDUAL  
10 OF A PURCHASING AGENCY WITH PURCHASING AUTHORITY CREATED  
11 PURSUANT TO SECTION 24-102-204 OR 24-102-302 (2) OR THE PRINCIPAL  
12 REPRESENTATIVE AUTHORIZED TO ENTER INTO CONTRACTS FOR CAPITAL  
13 CONSTRUCTION OR CONTROLLED MAINTENANCE PURSUANT TO PART 13 OF  
14 ARTICLE 30 OF THIS TITLE 24.

15 (32) **[Formerly 24-103-101 (4)]** "Professional services" means  
16 services of accountants, clergy, physicians, lawyers, and dentists and such  
17 other services as may be procured through agents of those services,  
18 excluding those professional services as defined in section 24-30-1402,  
19 as the executive director may by rule designate as professional services.

20 ~~(16)~~ (33) "Public employee" means an individual drawing a salary  
21 from a governmental body or a noncompensated individual performing  
22 personal services for a governmental body.

23 (34) **[Formerly 24-110-101 (4)]** "Public procurement unit"  
24 means either a local public procurement unit or a state public procurement  
25 unit.

26 (35) **[Formerly 24-103-101 (5)]** "Purchase description" means  
27 the words used in a solicitation to describe the supplies, services, or

1 construction to be purchased, and includes specifications attached to, or  
2 made a part of, the solicitation.

3 ~~(17)~~ (36) "Purchasing agency" means any governmental body  
4 other than the department of personnel which is authorized to enter into  
5 contracts by section 24-102-302 (1) by way of delegation from the  
6 executive director pursuant to section 24-102-302 (2) or by the way of  
7 delegation from the executive director. ~~pursuant to section 24-102-204.~~

8 ~~(18)~~ (37) "Request for proposals" means all documents, whether  
9 attached or incorporated by reference, utilized for soliciting proposals.  
10 REQUEST FOR PROPOSALS IS THE COMMONLY USED TERM FOR SOLICITING  
11 COMPETITIVE SEALED PROPOSALS.

12 (38) **[Formerly 24-103-101 (6)]** "Resident bidder" means:

13 (a) A person, ~~or business~~ PARTNERSHIP, CORPORATION, OR JOINT  
14 VENTURE that is authorized to transact business in Colorado and that  
15 maintains its principal place of business in Colorado; or

16 (b) A person, ~~or business~~ PARTNERSHIP, CORPORATION, OR JOINT  
17 VENTURE that:

18 (I) Is authorized to transact business in Colorado;

19 (II) ~~that~~ Maintains a place of business in Colorado; and ~~that~~

20 (III) Has ~~filed Colorado unemployment compensation reports in~~  
21 ~~at least seventy-five percent of the eight quarters immediately before~~  
22 ~~bidding on a contract~~ PAID COLORADO UNEMPLOYMENT COMPENSATION  
23 TAXES IN AT LEAST SIX OF THE EIGHT QUARTERS IMMEDIATELY PRIOR TO  
24 BIDDING ON A CONSTRUCTION CONTRACT FOR A PUBLIC PROJECT.

25 (39) "RESPONSIBLE VENDOR" MEANS A PERSON WHO HAS THE  
26 CAPABILITY IN ALL RESPECTS TO PERFORM FULLY THE CONTRACT  
27 REQUIREMENTS AND THE INTEGRITY AND RELIABILITY THAT WILL ASSURE



1 GOOD FAITH PERFORMANCE.

2 (40) "RESPONSIVE" MEANS A BID OR PROPOSAL THAT MEETS THE  
3 SPECIFICATIONS, ACCEPTABILITY REQUIREMENTS, AND TERMS AND  
4 CONDITIONS OF THE REQUEST FOR PROPOSALS OR INVITATION FOR BIDS  
5 AND THAT USES THE FORM PRESCRIBED BY THE PURCHASING AGENCY.

6 ~~(19)~~(41) "Rules" means state procurement rules and has the same  
7 meaning as provided in section 24-4-102 (15).

8 (42) "SEALED" MEANS A BID OR PROPOSAL SUBMITTED IN A  
9 MANNER THAT:

10 (a) ENSURES THAT THE CONTENTS OF THE BID, PROPOSAL, OR BEST  
11 VALUE BID CANNOT BE OPENED OR VIEWED BEFORE THE FORMAL BID  
12 OPENING WITHOUT LEAVING EVIDENCE THAT THE DOCUMENT HAS BEEN  
13 OPENED OR VIEWED;

14 (b) ENSURES THAT THE DOCUMENT CANNOT BE CHANGED, ONCE  
15 RECEIVED BY THE STATE, WITHOUT LEAVING EVIDENCE THAT THE  
16 DOCUMENT HAS BEEN CHANGED;

17 (c) BEARS A PHYSICAL OR ELECTRONIC SIGNATURE, A SELECTRONIC  
18 SIGNATURE IS DEFINED IN THE "UNIFORM ELECTRONIC TRANSACTIONS  
19 ACT", SECTION 24-71.3-102 (8), EVINCING AN INTENT BY THE BIDDER OR  
20 OFFEROR TO BE BOUND; AND

21 (d) RECORDS, MANUALLY OR ELECTRONICALLY, THE DATE AND  
22 TIME THE BID OR PROPOSAL IS RECEIVED BY THE STATE AND THAT CANNOT  
23 BE ALTERED WITHOUT LEAVING EVIDENCE OF THE ALTERATION.

24 ~~(20)~~(43) "Services" means the furnishing of labor, time, or effort  
25 by a contractor not involving the delivery of a specific end product other  
26 than reports which are merely incidental to the required performance. The  
27 term does not include professional services as defined in section

1 24-30-1402.

2 ~~(21) (Deleted by amendment, L. 96, p. 1533, § 98, effective June~~  
3 ~~1, 1996.)~~

4 (44) "SOLICITATION" MEANS ALL DOCUMENTS AND RELATED  
5 INFORMATION PUBLISHED ON AN ELECTRONIC BIDDING SYSTEM IN  
6 CONNECTION WITH A PROCUREMENT PRIOR TO THE RESPONSE DEADLINE.

7 (45) **[Formerly 24-104-101 (1)]** "Specification" means any  
8 description of the physical or functional characteristics or of the nature of  
9 a supply, service, or construction item. It may include a description of any  
10 requirement for inspecting, testing, or preparing a supply, service, or  
11 construction item for delivery.

12 (46) **[Formerly 24-110-101 (5)]** "State public procurement unit"  
13 means the department of personnel or any other purchasing agency of this  
14 state.

15 (47) "STATEMENT OF WORK" MEANS A DOCUMENT THAT DEFINES  
16 SPECIFIC ACTIVITIES AND DELIVERABLES AND THEIR RESPECTIVE  
17 TIMELINES, ALL OF WHICH FORM A CONTRACTUAL OBLIGATION UPON THE  
18 VENDOR IN PROVIDING SERVICES TO THE STATE.

19 ~~(22)~~(48) "Supplies" OR "GOODS" means all property, including but  
20 not limited to equipment, materials, and insurance. The term does not  
21 include land, the purchase of an interest in land, water or mineral rights,  
22 workers' compensation insurance, benefit insurance for state employees,  
23 or property furnished in connection with public printing, as defined in  
24 section 24-70-201.

25 ~~(23)~~ (49) "Using agency" means any governmental body of the  
26 state which utilizes any supplies, services, or construction procured under  
27 this code.

1           **SECTION 7.** In Colorado Revised Statutes, 24-101-401, **amend**  
2 (1) as follows:

3           **24-101-401. Public access to procurement information -**  
4 **repeal.** (1) Except as provided in ~~section 24-103-203 (4), procurement~~  
5 ~~information is a public record and is available to the public~~ SECTION  
6 24-103-101.5, PROPOSALS AND BIDS SHALL BE OPENED SO AS TO AVOID  
7 DISCLOSURE OF THE CONTENTS OF THE PROPOSAL OR BID TO COMPETING  
8 OFFERORS DURING THE REVIEW PROCESS. A REGISTER OF PROPOSALS AND  
9 BIDS SHALL BE PREPARED IN ACCORDANCE WITH RULES AND SUCH  
10 PROCUREMENT RECORDS SHALL BE OPEN FOR PUBLIC INSPECTION AFTER  
11 THE CONTRACT AWARD as provided in sections 24-72-203 and 24-72-204.  
12 THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES TO CLARIFY THE  
13 PROCESS FOR CLASSIFYING CONFIDENTIAL OR PROPRIETARY INFORMATION  
14 IN PROCUREMENT RECORDS.

15           **SECTION 8.** In Colorado Revised Statutes, **amend with**  
16 **relocated provisions** 24-102-202 as follows:

17           **24-102-202. Authority of the executive director and chief**  
18 **procurement officer - delegation of authority - rules.** (1) Consistent  
19 with the provisions of this code, the executive director may adopt  
20 operational procedures governing the internal functions of the  
21 department.

22           (2) (a) ~~[Formerly 24-102-401 (1)] Rules shall be promulgated in~~  
23 ~~accordance with the applicable provisions of section 24-4-103~~ THE  
24 EXECUTIVE DIRECTOR MAY PROMULGATE RULES IN ACCORDANCE WITH  
25 THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF THIS TITLE  
26 24, IN FURTHERANCE OF THE ADMINISTRATION OF THIS CODE.

27           (b) ~~[Formerly 24-102-401 (2)]~~ The executive director may

1 delegate his ~~power~~ OR HER AUTHORITY to promulgate rules.

2 (c) **[Formerly 24-102-401 (3)]** No rule PROMULGATED PURSUANT  
3 TO THIS SECTION shall change any commitment, right, or obligation of the  
4 state or of a contractor under a contract in existence on the effective date  
5 of such rule.

6 (3) **[Formerly 24-102-204]** Subject to rules, the executive director  
7 may delegate HIS OR HER purchasing authority to designees or to any  
8 department, agency, or official.

9 ~~(2)~~ (4) Except as otherwise specifically provided in this code, the  
10 ~~executive director~~ CHIEF PROCUREMENT OFFICER shall, pursuant to rules:

11 (a) Procure or supervise the procurement of all supplies and  
12 services needed by the state;

13 (b) Repealed.

14 (c) Establish and maintain programs for the inspection, testing,  
15 and acceptance of supplies and services;

16 (d) RETAIN THE RIGHT TO examine each requisition submitted by  
17 a using agency and approve, disapprove, or revise it as to quantity or  
18 quality;

19 (e) Develop and maintain programs and procedures to delegate  
20 purchasing authority in order to conserve resources for management of  
21 the statewide purchasing system; and

22 (f) Develop programs to evaluate and reduce the administrative  
23 costs of the statewide procurement function.

24 **SECTION 9.** In Colorado Revised Statutes, 24-102-202.5,  
25 **amend** (1), (2)(a), and (2.5) as follows:

26 **24-102-202.5. Supplier database - fees - cash fund - program**  
27 **account.** (1) The executive director shall develop a centralized database

1 that includes a listing of all businesses which are interested in providing  
2 goods and services to the state. The businesses in the database shall be  
3 identified by a registration number, and the executive director shall  
4 develop a procedure for notifying the appropriate businesses whenever  
5 the state issues ~~requests for proposals or invitations for bids~~  
6 SOLICITATIONS for goods or services which a particular business provides.  
7 The database shall be accessible through the department of personnel to  
8 all purchasing agencies designated pursuant to section 24-102-302 (2).

9 (2) (a) THE EXECUTIVE DIRECTOR MAY REQUIRE each business that  
10 wishes to be included in the database created pursuant to subsection (1)  
11 of this section ~~shall~~ TO pay a registration fee as determined by the  
12 executive director. The executive director ~~shall~~ MAY set and collect such  
13 fees as are necessary to cover the direct and indirect costs that are  
14 incurred in implementing the provisions of this section. The revenue from  
15 such fees shall be transmitted to the state treasurer, who shall credit the  
16 same to the supplier database cash fund, which fund is hereby created.  
17 The general assembly shall make appropriations from such fund as  
18 necessary to implement the provisions of this section. All money not  
19 expended or encumbered and all interest earned on the investment or  
20 deposit of the money in the fund shall remain in the fund and shall not  
21 revert to the general fund or any other fund at the end of any fiscal year.

22 (2.5) (a) The executive director shall develop and implement a  
23 statewide centralized electronic procurement system to allow the  
24 utilization of technology to create a more efficient delivery of state  
25 procurement services. The executive director ~~shall~~ MAY set and collect  
26 fees from vendors with cooperative purchasing agreements and from local  
27 public procurement units ~~as defined in section 24-110-101 (3), and that~~

1 are participating in the electronic procurement system, as necessary to  
2 cover the direct and indirect costs of implementing and maintaining the  
3 electronic procurement system. In addition, the executive director may  
4 collect moneys from cooperative purchasing organizations for  
5 procurement support.

6 (b) ~~Prior to July 1, 2013, the revenue from the fees and any~~  
7 ~~moneys received from cooperative purchasing organizations pursuant to~~  
8 ~~paragraph (a) of this subsection (2.5) shall be transmitted to the state~~  
9 ~~treasurer, who shall credit the same to the electronic procurement~~  
10 ~~program account, which is hereby created within the supplier database~~  
11 ~~cash fund created in paragraph (a) of subsection (2) of this section. The~~  
12 ~~moneys in the account shall be annually appropriated by the general~~  
13 ~~assembly for the purposes of implementing and maintaining the electronic~~  
14 ~~procurement system. All moneys not expended or encumbered and all~~  
15 ~~interest earned on the investment or deposit of the moneys in the account~~  
16 ~~shall remain in the account and shall not revert to the general fund or any~~  
17 ~~other fund at the end of any fiscal year; except that any unexpended~~  
18 ~~moneys remaining in the account on June 30, 2013, shall be transferred~~  
19 ~~to the supplier database cash fund.~~

20 (c) ~~Beginning July 1, 2013,~~ The revenue from the fees and any  
21 moneys collected from cooperative purchasing organizations pursuant to  
22 ~~paragraph (a) of this subsection (2.5)~~ SUBSECTION (2.5)(a) OF THIS  
23 SECTION shall be transmitted to the state treasurer, who shall credit the  
24 same to the supplier database cash fund created in ~~paragraph (a) of~~  
25 ~~subsection (2)~~ SUBSECTION (2)(a) of this section.

26 **SECTION 10.** In Colorado Revised Statutes, **amend** 24-102-207  
27 as follows:

1           **24-102-207. Statewide procurement card agreement.** (1) The  
2 department shall establish a statewide procurement card program. All  
3 governmental bodies that utilize a procurement card shall participate in  
4 the statewide program. For purposes of this section, "governmental body"  
5 ~~shall have~~ HAS the same meaning as set forth in ~~section 24-101-301 (10)~~  
6 SECTION 24-101-301 (19); except that, for purposes of this section,  
7 "governmental body" ~~shall also include~~ INCLUDES elected officials.

8           (2) Governmental bodies that are not subject to the "Procurement  
9 Code", articles 101 to 112 of this ~~title~~ TITLE 24, or the fiscal rules are  
10 subject to this section; except that, on and after December 1, 2010, this  
11 section ~~shall~~ DOES not apply to an institution of higher education that has  
12 elected to be excluded from the meaning of "governmental body"  
13 pursuant to ~~section 24-101-301 (10) (a)~~ SECTION 24-101-301 (19).

14           (3) The statewide procurement card shall be considered an  
15 alternate method of payment and shall not be considered a commitment  
16 voucher required by section 24-30-202 (1). Any revenues resulting from  
17 the procurement card program shall be deposited as cash revenue in the  
18 general fund and shall be subject to annual appropriation by the general  
19 assembly. Unless otherwise directed by the general assembly, the state  
20 controller shall make adjustments equivalent to such revenues in the form  
21 of a reduction of administrative costs allocated to governmental bodies on  
22 a basis proportional to each governmental body's contribution to statewide  
23 procurement card expenditures, as determined by the state controller, to  
24 ensure that the federal government receives its share of procurement card  
25 revenues as required by federal regulations and to ensure that the indirect  
26 obligations are funded. Institutions of higher education that elect to be  
27 excluded from the meaning of "governmental body" pursuant to ~~section~~

1 ~~24-101-301 (10) (a)~~ SECTION 24-101-301 (19) shall transfer money to the  
2 department of higher education or the Colorado commission on higher  
3 education to the extent required to pay indirect cost assessments, as  
4 defined in section 24-75-112 (1)(f). For purposes of this subsection (3)  
5 the term "allocated" does not mean an appropriation or cash transfer to  
6 any governmental body, but refers to an internal process within the office  
7 of the state controller.

8 **SECTION 11.** In Colorado Revised Statutes, 24-102-302, **amend**  
9 (2) and (3) as follows:

10 **24-102-302. Purchasing agencies - establishment - authority.**

11 (2) If the executive director OR HIS OR HER DESIGNEE is of the opinion  
12 and so certifies in writing that the needs of any governmental body are of  
13 such specialized nature and sufficient volume to warrant a purchasing  
14 agency for such governmental body, he OR SHE shall authorize the  
15 creation of the same. All such purchasing agencies shall operate under the  
16 provisions of this code and the rules promulgated pursuant thereto and  
17 shall be subject to the supervision and control of the executive director.  
18 All such purchasing agencies shall operate under the provisions of section  
19 17-24-111 ~~C.R.S.~~, requiring the purchase of goods and services from the  
20 division of correctional industries, and failure of any such purchasing  
21 agency to comply with such requirement shall be cause for the executive  
22 director to suspend for a period of up to one year at the discretion of the  
23 executive director the authority of a purchasing agency created pursuant  
24 to this subsection (2) to purchase goods and services. The authority of a  
25 purchasing agency to purchase goods and services may also be suspended  
26 at the discretion of the executive director. The financial and staff  
27 resources dedicated to the purchasing function in the affected agency



1 shall be under the authority of the department of personnel during the  
2 period of suspension, and purchases made for the affected agency shall  
3 be in accordance with the requirements of section 17-24-111 (1). ~~C.R.S.~~

4 (3) ~~The heads of purchasing agencies~~ PROCUREMENT OFFICIALS  
5 responsible for procuring the supplies, services, or construction delegated  
6 to them by subsections (1) and (2) of this section shall conduct  
7 procurements in accordance with the provisions of this code and its  
8 implementing rules. The executive director ~~shall~~ MAY establish a standard  
9 supplier's form and a standard set of procedures that each purchasing  
10 agency shall use in accepting the form and evaluating the supplier. ~~Each~~  
11 ~~purchasing agency created pursuant to this section shall submit a quarterly~~  
12 ~~report to the executive director regarding the quantity and type of goods~~  
13 ~~and services procured during the prior quarter. Such report shall include~~  
14 ~~a description of any instance where a contractor failed to deliver a good~~  
15 ~~or service in accordance with the provisions of the contract. The reporting~~  
16 ~~requirements established in this subsection (3) shall be in addition to and~~  
17 ~~not in lieu of any other reporting requirements established in this code.~~

18 **SECTION 12.** In Colorado Revised Statutes, **amend** 24-102-501  
19 as follows:

20 **24-102-501. Collection of data concerning public procurement.**

21 All using agencies shall furnish such reports as the ~~executive director~~  
22 CHIEF PROCUREMENT OFFICER may require concerning usage, needs, and  
23 stocks on hand, and the executive director shall have authority to  
24 prescribe forms to be used by the using agencies in the requisitioning,  
25 ordering, and reporting of supplies, services, and construction.

26 **SECTION 13.** In Colorado Revised Statutes, **amend** 24-103-201  
27 as follows:

1           **24-103-201. Methods of source selection.** (1) Unless otherwise  
2 authorized by law, all state contracts shall be awarded ~~by competitive~~  
3 ~~sealed bidding pursuant to section 24-103-202,~~ except as provided in:

4           (a) SECTION 24-103-202, CONCERNING AWARDS SOLICITED BY AN  
5 INVITATION FOR BIDS;

6           ~~(a)~~ (b) Section 24-103-203, concerning awards ~~by competitive~~  
7 ~~sealed proposals~~ SOLICITED BY A REQUEST FOR PROPOSALS;

8           ~~(a.5)~~ (c) Section 24-103-202.3, concerning ~~competitive sealed best~~  
9 ~~value bidding~~ AWARDS SOLICITED BY AN INVITATION FOR BEST VALUE  
10 BIDS;

11           ~~(b)~~ (d) Section 24-103-204, concerning small purchases;

12           ~~(c)~~ (e) Section 24-103-205, concerning sole source procurements;

13           ~~(d)~~ (f) Section 24-103-206, concerning emergency procurements;

14           ~~(e)~~ (g) Part 14 of article 30 of this ~~title~~ TITLE 24, concerning  
15 architect, engineer, landscape architect, and land surveying services;

16           ~~(f)~~ (h) Section 24-103-208, concerning other procurement  
17 methods; OR

18           ~~(g)~~ (i) Part 2 of article 38 of this ~~title~~ TITLE 24, concerning  
19 public-private initiatives.

20           **SECTION 14.** In Colorado Revised Statutes, **add** 24-103-201.5  
21 as follows:

22           **24-103-201.5. Market research - request for information.**

23           (1) A PROCUREMENT OFFICIAL MAY CONDUCT MARKET RESEARCH PRIOR  
24 TO SELECTING A METHOD OF SOURCE SELECTION PURSUANT TO THIS PART  
25 2. THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES IN ACCORDANCE  
26 WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF THIS  
27 TITLE 24, TO FURTHER DEFINE METHODS OF CONDUCTING MARKET

1 RESEARCH.

2 (2) A REQUEST FOR INFORMATION MAY BE USED AS A METHOD TO  
3 OBTAIN PRELIMINARY INFORMATION ABOUT A MARKET OR TYPE OF  
4 AVAILABLE SERVICE OR PRODUCT WHEN THERE IS NOT ENOUGH  
5 INFORMATION READILY AVAILABLE TO WRITE AN ADEQUATE  
6 SPECIFICATION OR STATEMENT OF WORK. A REQUEST FOR INFORMATION  
7 MAY ASK FOR INPUT FROM A POTENTIAL VENDOR TO ASSIST THE STATE IN  
8 PREPARING A SPECIFICATION OR STATEMENT OF WORK FOR A SUBSEQUENT  
9 SOLICITATION AND MAY ASK FOR PRICING INFORMATION ONLY WITH THE  
10 PROVISION THAT SUCH INFORMATION WOULD BE SUBMITTED  
11 VOLUNTARILY. THE REQUEST FOR INFORMATION MUST CLEARLY STATE  
12 THAT NO AWARD WILL RESULT FROM THE REQUEST.

13 (3) WHEN MARKET RESEARCH HAS BEEN CONDUCTED, THE  
14 GOVERNMENTAL BODY IS NOT OBLIGATED TO COMMIT TO A METHOD OF  
15 SOURCE SELECTION AND MAY DETERMINE THAT IT WILL NOT PURSUE A  
16 PROCUREMENT.

17 (4) ALL RESPONSES TO REQUESTS FOR INFORMATION ARE  
18 CONFIDENTIAL UNTIL AFTER AN AWARD BASED ON A SUBSEQUENT  
19 SOLICITATION HAS BEEN MADE OR UNTIL THE PROCUREMENT OFFICIAL  
20 DETERMINES THAT THE STATE WILL NOT PURSUE A SOLICITATION BASED  
21 ON THE REQUEST FOR INFORMATION. AFTER SUCH TIME, THE RESPONSES  
22 TO A REQUEST FOR INFORMATION SHALL BE OPEN TO PUBLIC INSPECTION  
23 IN ACCORDANCE WITH THE PROVISIONS OF THE "COLORADO OPEN  
24 RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE 24.

25 **SECTION 15.** In Colorado Revised Statutes, 24-103-202, **amend**  
26 (1), (6), (7), and (9); and **repeal** (2)(b) as follows:

27 **24-103-202. Invitation for bids.** (1) Contracts shall be ~~awarded~~

1 ~~by competitive sealed bidding~~ SOLICITED BY AN INVITATION FOR BIDS  
2 except as otherwise provided in section 24-103-201.

3 (2) (b) ~~An invitation for bids for a contract for the purchase of~~  
4 ~~supplies shall also state the required procedures and criteria for awarding~~  
5 ~~the contract as provided in section 24-103-202.5 if low tie bids are~~  
6 ~~received.~~

7 (6) Withdrawal of inadvertently erroneous bids before the award  
8 may be permitted pursuant to rules if the bidder submits proof of  
9 evidentiary value which clearly and convincingly demonstrates that an  
10 error was made. Except as otherwise provided by rules, all decisions to  
11 permit the withdrawal of bids based on such bid mistakes shall be  
12 supported by a written determination made by the ~~executive director or~~  
13 ~~the head of a purchasing agency~~ CHIEF PROCUREMENT OFFICER OR THE  
14 PROCUREMENT OFFICIAL.

15 (7) The contract shall be awarded with reasonable promptness by  
16 written notice to the low responsible bidder whose bid meets the  
17 requirements and criteria set forth in the invitation for bids, except as  
18 otherwise provided for certain low tie bids under ~~section 24-103-202.5~~  
19 SECTION 24-103-902. In the event that all bids for a construction project  
20 exceed available funds, as certified by the appropriate fiscal officer, the  
21 ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL is authorized, in  
22 situations where time or economic considerations preclude resolicitation  
23 of work of a reduced scope, to negotiate an adjustment of the bid price  
24 with the low responsible bidder in order to bring the bid within the  
25 amount of available funds; except that the functional specifications  
26 integral to completion of the project may not be reduced in scope, taking  
27 into account the project plan, design, and specifications and quality of

1 materials.

2 (9) The provisions of subsections (4), (5), and (6) of this section  
3 shall also apply to construction and shall be in addition to any other  
4 requirements for ~~competitive sealed bidding~~ AN INVITATION FOR BIDS for  
5 construction as provided for in this ~~title~~ TITLE 24.

6 **SECTION 16.** In Colorado Revised Statutes, **amend**  
7 24-103-202.3 as follows:

8 **24-103-202.3. Invitation for best value bids.** (1) When,  
9 pursuant to rules, ~~the state purchasing director, the head of a purchasing~~  
10 ~~agency, or a designee of either officer who is in a higher ranking~~  
11 ~~employment position than a procurement officer~~ THE CHIEF  
12 PROCUREMENT OFFICER OR A PROCUREMENT OFFICIAL determines in  
13 writing that the use of ~~competitive sealed~~ AN INVITATION FOR best value  
14 ~~bidding~~ BIDS is advantageous to the state, a contract may be ~~entered into~~  
15 ~~by competitive sealed~~ SOLICITED BY INVITATION FOR best value ~~bidding~~  
16 BIDS.

17 (2) An invitation for ~~bids under competitive sealed~~ best value  
18 ~~bidding~~ BIDS shall be made in the same manner as provided in section  
19 24-103-202 (2), (3), and (4).

20 (3) (a) ~~The state purchasing director or the head of a purchasing~~  
21 ~~agency~~ CHIEF PROCUREMENT OFFICER OR PROCUREMENT OFFICIAL may  
22 allow a bidder to submit prices for enhancements, options, or alternatives  
23 to the base bid for a commodity or service that will result in a product or  
24 service to the state having the best value at the lowest cost. The invitation  
25 for ~~bids for competitive sealed~~ best value ~~bidding~~ BIDS must clearly state  
26 the purchase description of the commodity or service being solicited and  
27 the types of enhancements, options, or alternatives that may be bid;

1       except that the functional specifications integral to the commodity or  
2       service may not be reduced.

3           (b) Prices for enhancements, options, or alternatives to the bid  
4       may be evaluated by the ~~state purchasing director or the head of a~~  
5       ~~purchasing agency~~ CHIEF PROCUREMENT OFFICER OR PROCUREMENT  
6       OFFICIAL to determine whether the total of the bid price and the prices for  
7       enhancements, options, or alternatives provide a contract with the best  
8       value at the lowest cost to the state. This evaluation shall be made  
9       utilizing the rules of the executive director of the department of personnel  
10      promulgated pursuant to ~~paragraph (d) of this subsection (3)~~ SUBSECTION  
11      (3)(d) OF THIS SECTION.

12          (c) A contract may be awarded to a bidder where the total amount  
13      of a bid price and the prices for enhancements, options, or alternatives of  
14      the bidder exceed the total amount of the bid price and the prices for  
15      enhancements, options, or alternatives of another bidder if it is  
16      determined pursuant to ~~paragraph (b) of this subsection (3)~~ SUBSECTION  
17      (3)(b) OF THIS SECTION that the higher total amount provides a contract  
18      with the best value at the lowest cost to the state.

19          (d) The executive director of the department of personnel ~~shall~~  
20      MAY promulgate rules to be utilized by the ~~state purchasing director or the~~  
21      ~~head of a purchasing agency~~ CHIEF PROCUREMENT OFFICER OR  
22      PROCUREMENT OFFICIAL in making the evaluation pursuant to ~~paragraph~~  
23      ~~(b) of this subsection (3)~~ SUBSECTION (3)(b) OF THIS SECTION. The rules  
24      shall provide:

25           (I) Criteria for objectively measuring prices for enhancements,  
26      options, or alternatives to a bid, including relevant formulas or guidelines;

27           (II) Criteria for objectively determining whether the prices for

1 enhancements, options, or alternatives provide the best value at the lowest  
2 cost to the state.

3 (4) The contract shall be awarded with reasonable promptness by  
4 written notice to the ~~low responsible~~ bidder whose bid meets the  
5 requirements and criteria set forth in the invitation for bids. ~~except as~~  
6 ~~otherwise provided for certain low tie bids under section 24-103-202.5.~~

7 **SECTION 17.** In Colorado Revised Statutes, 24-103-203, **amend**  
8 (1) and (7); and **repeal** (4) as follows:

9 **24-103-203. Requests for proposals.** (1) ~~When, pursuant to~~  
10 ~~rules, the executive director, the head of a purchasing agency, or a~~  
11 ~~designee of either officer who is in a higher ranking employment position~~  
12 ~~than a procurement officer determines in writing that the use of~~  
13 ~~competitive sealed bidding is either not practicable or not advantageous~~  
14 ~~to the state, A contract may be entered into by competitive sealed~~  
15 ~~REQUESTS FOR proposals. Competitive sealed REQUESTS FOR proposals~~  
16 ~~may be used for the procurement of professional services. whether or not~~  
17 ~~the determination described by this subsection (1) has been made. The~~  
18 ~~executive director may provide by rule that it is neither practicable nor~~  
19 ~~advantageous to the state to procure specified types of supplies, services,~~  
20 ~~or construction by competitive sealed bidding AN INVITATION FOR BIDS.~~

21 (4) ~~Proposals shall be opened so as to avoid disclosure of contents~~  
22 ~~to competing offerors during the process of negotiation. A register of~~  
23 ~~proposals shall be prepared in accordance with rules and shall be open for~~  
24 ~~public inspection after the contract award subject to the provisions of~~  
25 ~~sections 24-72-203 and 24-72-204.~~

26 (7) The award shall be made to the responsible offeror whose  
27 proposal is determined in writing to be the most advantageous to the state,

1 taking into consideration the price and the evaluation factors set forth in  
2 the request for proposals. No other factors or criteria shall be used in the  
3 evaluation. The contract file shall contain the basis on which the award  
4 is made. ~~A contract resulting from a competitive sealed proposal is not~~  
5 ~~awarded until any protest made in connection with the proposal has been~~  
6 ~~resolved pursuant to 24-109-102.~~ No property interest of any nature shall  
7 accrue until the contract is awarded and signed by both parties.

8 **SECTION 18.** In Colorado Revised Statutes, **amend** 24-103-205  
9 as follows:

10 **24-103-205. Sole source procurement.** A contract may be  
11 awarded for a supply, service, or construction item without competition  
12 when, under rules, the executive director, the ~~head of a purchasing agency~~  
13 CHIEF PROCUREMENT OFFICER, THE PROCUREMENT OFFICIAL, or a designee  
14 of ~~either~~ ANY SUCH officer ~~who is in a higher ranking employment~~  
15 ~~position than a procurement officer~~ determines in writing that there is  
16 only one source for the required supply, service, or construction item.  
17 ~~Sole source procurement provisions shall not be used when the goods or~~  
18 ~~services needed are available through the division of correctional~~  
19 ~~industries unless the purchasing agency specifies the division of~~  
20 ~~correctional industries as the sole source provider.~~

21 **SECTION 19.** In Colorado Revised Statutes, **amend** 24-103-206  
22 as follows:

23 **24-103-206. Emergency procurements.** Notwithstanding any  
24 other provision of this code, the executive director, the ~~head of a~~  
25 ~~purchasing agency~~ PROCUREMENT OFFICIAL, or a designee of either officer  
26 may make or authorize others to make emergency procurements when  
27 there exists a threat to public health, welfare, or safety under emergency



1 conditions, as defined in rules, but such emergency procurements shall be  
2 made with such competition as is practicable under the circumstances. A  
3 written determination of the basis for the emergency and for the selection  
4 of the particular contractor shall be included in the contract file.

5 **SECTION 20.** In Colorado Revised Statutes, **amend** 24-103-301  
6 as follows:

7 **24-103-301. Cancellation of invitations for bids or requests for**  
8 **proposals.** An invitation for bids, a request for proposals, or any other  
9 solicitation may be cancelled or any or all bids or proposals may be  
10 rejected in whole or in part ~~as may be specified in the solicitation~~ AT ANY  
11 TIME BEFORE A CONTRACT IS EXECUTED when it is in the best interests of  
12 the state pursuant to rules. The reasons therefor shall be made part of the  
13 contract file BUT SHALL REMAIN CONFIDENTIAL AND SHALL NOT BE  
14 SUBJECT TO THE PROVISIONS OF THE "COLORADO OPEN RECORDS ACT",  
15 PART 2 OF ARTICLE 72 OF THIS TITLE 24, FOR THE LESSER OF SIX MONTHS  
16 OR UNTIL THE CONTRACT AT ISSUE IS AWARDED.

17 **SECTION 21.** In Colorado Revised Statutes, **amend** 24-103-402  
18 as follows:

19 **24-103-402. Prequalification of suppliers.** Prospective suppliers  
20 may be prequalified for particular types of supplies, services, and  
21 construction, and the method of compiling and soliciting from ~~such~~  
22 ~~mailing~~ lists of potential contractors ~~shall~~ MAY be pursuant to rules.

23 **SECTION 22.** In Colorado Revised Statutes, 24-103-403, **amend**  
24 (1); and **repeal** (2) as follows:

25 **24-103-403. Cost or pricing data.** (1) A contractor shall, except  
26 as provided in subsection (3) of this section, submit cost or pricing data  
27 and shall certify that, to the best of his OR HER knowledge and belief, the

1 cost or pricing data submitted was accurate, complete, and current as of  
2 a mutually determined specified date prior to the date of:

3 (a) The pricing of any contract awarded by ~~competitive sealed~~  
4 REQUESTS FOR proposals AS SPECIFIED IN section 24-103-203, or pursuant  
5 to the sole source procurement authority AS SPECIFIED IN section  
6 24-103-205, where the total contract price is expected to exceed an  
7 amount established by rule; or

8 (b) The pricing of any ~~change order~~ or contract modification  
9 which is expected to exceed an amount established by rule.

10 (2) ~~Any contract, change order, or contract modification under~~  
11 ~~which a certificate is required shall contain a provision that the price to~~  
12 ~~the state, including profit or fee, shall be adjusted to exclude any~~  
13 ~~significant sums by which the state finds that such price was increased~~  
14 ~~because the contractor furnished cost or pricing data was inaccurate,~~  
15 ~~incomplete, or not current as of the date agreed upon between the parties.~~

16 **SECTION 23.** In Colorado Revised Statutes, **amend** 24-103-701  
17 as follows:

18 **24-103-701. Finality of determinations.** The determinations  
19 required by sections ~~24-103-202 (6), 24-103-203 (1) and (7), 24-103-205,~~  
20 ~~24-103-206, 24-103-401 (1), 24-103-403 (3), 24-103-501, 24-103-502,~~  
21 ~~and 24-103-503 (2)~~ THIS CODE are final and conclusive unless they are  
22 clearly erroneous, arbitrary, capricious, or contrary to law.

23 **SECTION 24.** In Colorado Revised Statutes, 24-103-803, **amend**  
24 (3) and (4); and **repeal** (2)(b) as follows:

25 **24-103-803. Nonprofit agencies - self-certified vendor list -**  
26 **creation.** (2) The department shall accept applications from any  
27 nonprofit agency that seeks to become a self-certified vendor to bid on

1 certain services solicitations. In order for a nonprofit agency to become  
2 a self-certified vendor, the nonprofit agency shall certify that:

3 (b) ~~The nonprofit agency is registered on the centralized supplier~~  
4 ~~database of all businesses that are interested in providing goods and~~  
5 ~~services to the state, which database is created by the executive director~~  
6 ~~of the department of personnel pursuant to section 24-102-202.5;~~

7 (3) The department shall create and maintain a list of all nonprofit  
8 agencies that have attained self-certified vendor status and shall make the  
9 list available to the department of personnel ~~The department of personnel~~  
10 ~~shall distribute the list to each state agency.~~ PURSUANT TO RULES  
11 PROMULGATED BY THE EXECUTIVE DIRECTOR.

12 (4) A nonprofit agency's self-certified vendor status is valid for  
13 ~~one year~~ UP TO FIVE YEARS after the date that the nonprofit agency's  
14 self-certification application was approved. ~~After one year,~~ A nonprofit  
15 agency is required to reapply to the department, AT A TIME AND IN A  
16 MANNER DETERMINED BY THE DEPARTMENT, for self-certified vendor  
17 status to be eligible to respond to a set aside solicitation pursuant to this  
18 part 8.

19 **SECTION 25.** In Colorado Revised Statutes, **amend** 24-103-804  
20 as follows:

21 **24-103-804. Services solicitations - categorical identification.**

22 (1) (a) The department of personnel shall publish a list of the services  
23 that state agencies seek through services solicitations and shall make the  
24 list available to nonprofit agencies on an annual basis. ~~As part of a~~  
25 ~~nonprofit agency's application to become a self-certified vendor pursuant~~  
26 ~~to section 24-103-803, the nonprofit agency shall specify the tasks and~~  
27 ~~activities that it is able to perform for state agencies based on the list~~

1     ~~created by the department of personnel.~~ THE EXECUTIVE DIRECTOR SHALL  
2     PROMULGATE RULES REGARDING THE PROCESS FOR REVIEW,  
3     DETERMINATIONS, AND PUBLICATION.

4             (b) ~~The department shall review each application submitted~~  
5     ~~pursuant to paragraph (a) of this subsection (1) and create a list of the~~  
6     ~~types of tasks and activities that it deems appropriate for a self-certified~~  
7     ~~vendor to perform. The department shall create an initial tasks and~~  
8     ~~activities list within ninety days after August 5, 2008, and shall review~~  
9     ~~and update the list at least annually.~~

10            (2) ~~After creating the tasks and activities list pursuant to~~  
11     ~~subsection (1) of this section, the department shall meet with the state~~  
12     ~~purchasing director or the director's designee to determine the types of~~  
13     ~~services solicitations that would involve some or all of the tasks or~~  
14     ~~activities specified on the list and that could be successfully performed by~~  
15     ~~self-certified vendors. The department and the state purchasing director~~  
16     ~~or the director's designee shall solicit input from the purchasing director~~  
17     ~~of each state agency regarding the nature of services for which the state~~  
18     ~~agency periodically issues solicitations for bids and the type of services~~  
19     ~~that the state agency believes could be successfully performed by a~~  
20     ~~self-certified vendor. Within ninety days after the establishment of the list~~  
21     ~~of tasks and activities created pursuant to subsection (1) of this section,~~  
22     ~~the department shall create a list of the types of services solicitations that~~  
23     ~~it deems appropriate for a self-certified vendor to perform. The list shall~~  
24     ~~be referred to as the "services set aside list". The department shall review~~  
25     ~~and update the list at least annually.~~

26            (3) ~~The department shall provide the services set aside list to the~~  
27     ~~state purchasing director. The state purchasing director shall provide the~~

1 services set aside list to the purchasing director of each state agency and  
2 shall make the list available to any nonprofit agency that is self-certified  
3 to bid on services solicitations pursuant to this part 8.

4 **SECTION 26.** In Colorado Revised Statutes, 24-103-805, **amend**  
5 (1), (5), (6), and (7) as follows:

6 **24-103-805. Contract set asides - bid process created by**  
7 **department of personnel - obligation of state agencies - rules.**

8 (1) (a) Any state agency that intends to solicit bids for a service that is  
9 included on the services set aside list created pursuant to section  
10 24-103-804 shall first solicit bids from self-certified vendors for such  
11 service and shall follow the procedures specified in ~~this subsection (1)~~  
12 RULES PROMULGATED BY THE EXECUTIVE DIRECTOR.

13 ~~(a)~~ (b) If two or more self-certified vendors bid on the solicitation  
14 for the services, the ~~purchasing director of the state agency~~ PROCUREMENT  
15 OFFICIAL shall award a contract to one of the self-certified vendors based  
16 on ~~a competitive price determination~~ WHICH ACCEPTABLE RESPONSE IS  
17 MOST ADVANTAGEOUS TO THE STATE WITH PRICE BEING THE PRIMARY  
18 CONSIDERATION.

19 ~~(b)~~ (c) If one self-certified vendor bids on the solicitation for the  
20 services, the ~~purchasing director of the state agency~~ PROCUREMENT  
21 OFFICIAL shall award a contract to the self-certified vendor and shall  
22 ensure that the contract is awarded at a fair and reasonable price of up to  
23 fifteen percent above the fair market value of the services, subject to  
24 available appropriations.

25 ~~(c)~~ (d) If the state agency does not receive a bid from any  
26 self-certified vendor for the services, the state agency is permitted to  
27 procure the services through other approved procurement methods and

1 shall not be subject to the requirements of this part 8 for that specific  
2 solicitation.

3 (5) The department of personnel ~~shall~~ MAY promulgate rules to  
4 implement the requirements of this section pursuant to section  
5 24-102-101. Such rules shall be promulgated in accordance with the  
6 provisions of article 4 of this ~~title~~ TITLE 24.

7 (6) Any ~~state agency~~ SELF-CERTIFIED VENDOR that has BEEN  
8 awarded a solicitation for services ~~to a self-certified vendor~~ BY A STATE  
9 AGENCY pursuant to this part 8 shall report to the ~~department of personnel~~  
10 CHIEF PROCUREMENT OFFICER regarding the progress of the ~~solicitation~~  
11 AWARD AND THE CONTRACT in a manner and frequency to be determined  
12 by the ~~department of personnel~~ CHIEF PROCUREMENT OFFICER. THE  
13 VENDOR SHALL INCLUDE IN THE REPORT THE PERCENTAGE OF THE TOTAL  
14 CONTRACT PRICE THAT IT WILL SPEND ON THE SALARY OR WAGES OF THE  
15 EMPLOYEES HIRED TO PERFORM THE SERVICES SOLICITATION, NOT  
16 INCLUDING THE SALARY OR WAGES FOR ADMINISTRATIVE STAFF OR  
17 EMPLOYEES.

18 (7) Any ~~state agency that awards a services solicitation to a~~  
19 ~~self-certified vendor pursuant to this part 8 shall include in the contract~~  
20 ~~with such self-certified vendor the requirement that the vendor must~~  
21 maintain the requirements to be a self-certified vendor pursuant to section  
22 24-103-803 (2) for the DURATION OF THE SERVICES SET ASIDE LIST AND  
23 FOR THE entire term of ~~the~~ ANY contract RESULTING FROM THE SERVICES  
24 SET ASIDE LIST.

25 **SECTION 27.** In Colorado Revised Statutes, **add with amended**  
26 **and relocated provisions** part 9 to article 103 of title 24 as follows:

27 PART 9

1                   PROCUREMENT PREFERENCES AND GOALS

2                   **24-103-901. Procurement preferences and goals.** THE  
3                   PROCUREMENT PREFERENCES AND GOALS SPECIFIED IN THIS PART 9 APPLY  
4                   TO THE AWARD OF CONTRACTS UNDER THIS CODE.

5                   **24-103-902. [Formerly 24-103-202.5] Low tie bids - award**  
6                   **procedure and determination - bid preference.** (1) If low tie bids are  
7                   received in response to an invitation for bids for a supply contract, the  
8                   following procedures are required:

9                   (a) If the low tie bids are from a resident bidder and a nonresident  
10                  bidder, the resident bidder shall be given preference over the nonresident  
11                  bidder;

12                  (b) If the low tie bids are from resident bidders, the procurement  
13                  officer AGENT shall:

14                  (I) Use a fair and reasonable procedure for determining which  
15                  bidder receives the contract award that at a minimum provides for the  
16                  presence, at the time and place the determination is made, of the bidders  
17                  or the bidders' representatives and an impartial witness designated by the  
18                  procurement officer AGENT who is not an employee of that procurement  
19                  officer's agency; and

20                  (II) Give the bidders at least five business days' written notice by  
21                  certified mail of the date the determination will be made, of the procedure  
22                  for making the determination, and that the bidders or the bidders'  
23                  representatives may be present when the determination is made;

24                  (c) If the low tie bids are only from nonresident bidders, the  
25                  procurement officer AGENT shall follow the procedures in ~~subparagraphs~~  
26                  ~~(I) and (II) of paragraph (b) of this subsection~~ (1) SUBSECTIONS (1)(b)(I)  
27                  AND (1)(b)(II) OF THIS SECTION;

1 (d) All other applicable provisions of the code that are not  
2 inconsistent with this section shall be followed.

3 (2) If the procurement ~~officer~~ AGENT determines that compliance  
4 with this section will cause denial of federal moneys that would otherwise  
5 be available or would otherwise be inconsistent with federal law, this  
6 section shall be suspended, but only to the extent necessary to prevent  
7 denial of the moneys or to eliminate the inconsistency with federal law.

8 **24-103-903. [Formerly 24-103-207] State purchases of recycled**  
9 **paper and recycled products - definitions.** (1) When purchasing paper  
10 and paper products, ~~the executive director or any purchasing agent~~  
11 PROCUREMENT AGENT shall, whenever the price is competitive and the  
12 quality adequate for the purpose intended, purchase recycled paper, as  
13 defined in section 13-1-133 (4)(d). ~~C.R.S.~~

14 (2) For the fiscal year 1990-91, the executive director shall  
15 establish as a goal that at least ten percent of the total volume of paper  
16 and paper products purchased by the state shall contain recycled paper.  
17 The goal shall increase to twenty percent for the fiscal year 1991-92, to  
18 thirty percent for the fiscal year 1992-93, to forty percent for the fiscal  
19 year 1993-94, and to fifty percent for the fiscal year 1994-95, and for each  
20 fiscal year thereafter.

21 (3) Each agency using recycled paper may print the notation  
22 "printed on recycled stock" on any paper or paper product which has been  
23 certified by the division as recycled paper.

24 (4) For purposes of this section, "paper and paper products" means  
25 paper items, including but not limited to paper napkins, towels,  
26 corrugated and other cardboard, toilet tissue, high-grade office paper,  
27 newsprint, offset paper, bond paper, xerographic bond paper, mimeo



1 paper, and duplicator paper.

2 (5) When purchasing any product with public funds, ~~the executive~~  
3 ~~director or any purchasing agent~~ PROCUREMENT AGENT shall be  
4 authorized to purchase products or materials with recycled content, that  
5 have been source-reduced, that are reusable, or that have been composted,  
6 unless one or more of the following conditions exist:

7 (a) The product is not available within a reasonable period of  
8 time;

9 (b) The product fails to meet existing purchasing rules, including  
10 specifications; or

11 (c) The product fails to meet federal or state health or safety  
12 standards, as set forth in the code of federal regulations or the Colorado  
13 code of regulations.

14 (6) In addition to the requirements set forth in subsections (1), (2),  
15 and (5) of this section, the ~~purchasing agent~~ PROCUREMENT AGENT shall  
16 be authorized to purchase, when cost-efficient and economically feasible,  
17 equipment that results in the reduction of paper usage.

18 **24-103-904. [Formerly 24-103-207.5] Purchasing preference**  
19 **for environmentally preferable products - definitions.** (1) As used in  
20 this section, unless the context otherwise requires, "environmentally  
21 preferable products" means products that have a lesser or reduced adverse  
22 effect on human health and the environment when compared with  
23 competing products that serve the same purpose. The product comparison  
24 may consider such factors as the availability of any raw materials used in  
25 the product being purchased and the availability, use, production, safe  
26 operation, maintenance, packaging, distribution, disposal, or recyclability  
27 of the product being purchased.

1           (2) All invitations for bids for products shall include language that  
2 describes the availability of the purchasing preference for environmental  
3 products. In connection with the purchase of products, a governmental  
4 body shall award the contract to a bidder who offers environmentally  
5 preferable products subject to the conditions specified in subsection (3)  
6 of this section unless the specifications used in the solicitation contain  
7 environmentally preferable product criteria. This preference does not  
8 apply to the purchase of services, including construction services.

9           (3) The preference specified in subsection (2) of this section shall  
10 apply only if all of the following conditions are met and selecting an  
11 environmentally preferable product would not otherwise be  
12 disadvantageous to the state upon consideration of these conditions,  
13 singly or in combination:

14           (a) The quality of the environmentally preferable products meets  
15 the specification of the bid.

16           (b) The environmentally preferable products are suitable for the  
17 use required by the purchasing entity.

18           (c) Any bidder able to offer environmentally preferable products  
19 is able to supply such products in sufficient quantity, as indicated in the  
20 invitation for bids.

21           (d) The bid price for environmentally preferable products does not  
22 exceed the lowest bid price for products that are not environmentally  
23 preferable by more than five percent.

24           (e) The head of the governmental body or other official charged  
25 by law with the duty to purchase products has made a determination that  
26 the governmental body is able to purchase the environmentally preferable  
27 products out of the governmental body's existing budget without any

1 further supplemental or additional appropriation.

2 ~~(f) (Deleted by amendment, L. 2008, p. 575, § 1, effective August~~  
3 ~~5, 2008.)~~

4 (4) If the bid price for environmentally preferable products  
5 exceeds the bid price for products that are not environmentally preferable  
6 by more than five percent, a governmental body may award the contract  
7 to a bidder who offers environmentally preferable products where the  
8 governmental body demonstrates, on the basis of assessments such as the  
9 costs of ownership and a life-cycle analysis, that long-term savings to the  
10 state will result from environmentally preferable purchasing in  
11 accordance with the requirements of this section. Nothing in this section  
12 shall require that a governmental body perform an analysis of the costs of  
13 ownership or a life-cycle analysis in connection with the purchase of any  
14 products.

15 (5) (a) Any bidder that seeks to qualify for the preference created  
16 by subsection (2) of this section shall provide documentation to the  
17 governmental body inviting the bid that the products offered by the bidder  
18 are environmentally preferable. This requirement may be satisfied by  
19 submission of any of the following:

20 (I) A life-cycle analysis conducted on the applicable product that  
21 has been conducted in accordance with applicable standards as  
22 determined by the purchasing governmental body or by the international  
23 organization for standardization or any successor organization;

24 (II) A reference to an existing environmentally preferable product  
25 list maintained by a state or the federal government that contains the  
26 product; or

27 (III) A reference to a nationally recognized third-party

1 certification entity that has certified the product as environmentally  
2 preferable on the basis of a valid life-cycle analysis. The governor's  
3 energy office or successor office shall maintain a list of certification  
4 entities.

5 (b) The governmental body may rely in good faith on any form of  
6 documentation that satisfies the requirement of ~~paragraph (a) of this~~  
7 ~~subsection (5)~~ SUBSECTION (5)(a) OF THIS SECTION.

8 (c) Notwithstanding any other provision of this section, if none of  
9 the forms of documentation specified in ~~paragraph (a) of this subsection~~  
10 ~~(5)~~ SUBSECTION (5)(a) OF THIS SECTION apply to the product being  
11 purchased, the requirements of this section shall not apply to the purchase  
12 of the product.

13 ~~(6) A governmental body shall report to the joint budget~~  
14 ~~committee of the general assembly the results of any analysis of the costs~~  
15 ~~of ownership and life-cycle analysis used to justify the purchase of any~~  
16 ~~environmentally preferable products in accordance with the requirements~~  
17 ~~of subsection (4) of this section during the previous fiscal year.~~

18 ~~(7)~~ (6) In connection with any cost of ownership analysis or  
19 life-cycle analysis undertaken in connection with any purchase under this  
20 section of a product that involves the replacement of existing electrical,  
21 natural gas, or steam service, the cost analysis shall consider any stranded  
22 utility costs.

23 **24-103-905. [Formerly 24-103-211] Service-disabled**  
24 **veteran-owned small businesses - state procurement preference -**  
25 **definitions.** (1) As used in this section, unless the context otherwise  
26 requires:

27 (a) "Service-disabled veteran-owned small business" means a

1 business that is:

2 (I) Incorporated or organized in the state or that is maintaining a  
3 place of business or office in the state; and

4 (II) Officially registered and verified as a service-disabled  
5 veteran-owned small business by the ~~center for veterans enterprise~~  
6 CENTER FOR VERIFICATION AND EVALUATION within the United States  
7 department of veterans affairs.

8 (b) "State agency" means a principal department of the executive  
9 branch of state government as specified in section 24-1-110, including  
10 any division, office, agency, or other unit created within a principal  
11 department, including institutions of higher education and the Colorado  
12 commission on higher education; except that "state agency" does not  
13 include those entities that have elected to be exempt from the code  
14 pursuant to section 24-101-105 (1)(b).

15 (2) In awarding all contracts that are subject to this code, the state  
16 shall have the goal of awarding at least three percent of all such contracts,  
17 by dollar value, to service-disabled veteran-owned small businesses. To  
18 satisfy this goal, a state agency may grant a preference for  
19 service-disabled veteran-owned small businesses.

20 (3) When a state agency intends to award a contract to a business  
21 in furtherance of the three percent goal specified in subsection (2) of this  
22 section, the state agency shall, prior to awarding the contract, require the  
23 business to submit to the agency documentation from the United States  
24 department of veterans affairs that verifies that the business is a  
25 service-disabled veteran-owned small business.

26 (4) On or before September 30, 2015, and on or before September  
27 30 each year thereafter, the executive director shall submit a report

1 regarding the state's progress in satisfying the three percent goal  
2 established in this section to the department of military and veterans  
3 affairs, the members of the Colorado board of veterans affairs, and to the  
4 members of the committees of the house of representatives and the senate  
5 that have jurisdiction over state affairs and veterans affairs. The report  
6 shall include the following:

7 (a) The total number of contracts that all state agencies awarded  
8 to service-disabled veteran-owned small businesses in the prior fiscal year  
9 and the number of such contracts that each state agency awarded;

10 (b) The total dollar amount of contracts that all state agencies  
11 awarded to service-disabled veteran-owned small businesses in the prior  
12 fiscal year and the percentage that such dollar amount bears to the total  
13 dollar amount of contracts awarded by all state agencies in the prior fiscal  
14 year; AND

15 (c) The total dollar amount of contracts that each state agency  
16 awarded to service-disabled veteran owned small businesses in the prior  
17 fiscal year and the percentage that such dollar amount bears to the total  
18 dollar amount of contracts awarded by the state agency in the prior fiscal  
19 year. and

20 ~~(d) The total number of service-disabled veteran owned small~~  
21 ~~businesses that responded to solicitation for bids or proposals issued by~~  
22 ~~all state agencies in the prior fiscal year and the total number of such~~  
23 ~~businesses that responded to solicitations for bids or proposals issued by~~  
24 ~~each state agency.~~

25 **24-103-906. [Formerly 8-18-101] Bid preference - state**  
26 **contracts.** (1) (a) Except as provided in paragraph (b) of this subsection  
27 ~~(1)~~ SUBSECTION (1)(b) OF THIS SECTION and in ~~section 8-18-103~~ SECTION

1 24-103-907, when a contract for commodities or services is to be awarded  
2 to a bidder, a resident bidder ~~as defined in section 8-19-102 (2)~~ shall be  
3 allowed a preference against a nonresident bidder equal to the preference  
4 given or required by the state in which the nonresident bidder is a  
5 resident.

6 (b) Notwithstanding ~~paragraph (a) of this subsection (1)~~  
7 SUBSECTION (1)(a) OF THIS SECTION, when an invitation for bids for a  
8 contract for the purchase of commodities results in a low tie bid, ~~as~~  
9 ~~defined in section 24-103-101, C.R.S.~~, the provisions of ~~section~~  
10 ~~24-103-202.5, C.R.S.~~ SECTION 24-103-902, apply.

11 (c) For the purposes of this subsection (1), "commodities"  
12 includes supplies as defined in ~~section 24-101-301 (22), C.R.S.~~ SECTION  
13 24-101-301 (48).

14 (2) If it is determined by the ~~officer~~ PROCUREMENT AGENT  
15 responsible for awarding the bid that compliance with this section may  
16 cause denial of federal moneys which would otherwise be available or  
17 would otherwise be inconsistent with requirements of federal law, this  
18 section shall be suspended, but only to the extent necessary to prevent  
19 denial of the moneys or to eliminate the inconsistency with federal  
20 requirements.

21 ~~(3) This section applies to contracts governed by the procurement~~  
22 ~~code in articles 101 to 112 of title 24, C.R.S.~~

23 **24-103-907. [Formerly 8-18-103] Preference for state**  
24 **agricultural products.** (1) When purchasing agricultural products, a  
25 governmental body ~~as defined in section 24-101-301 (10), C.R.S.~~, shall  
26 award the contract to a resident bidder ~~as defined in section 8-19-102 (2)~~,  
27 who produces products in the state, subject to the conditions in subsection

1 (2) of this section.

2 (2) The preference in subsection (1) of this section shall apply  
3 only if the following conditions are met:

4 (a) The quality of available products produced in the state is equal  
5 to the quality of products produced outside the state;

6 (b) Available products produced in the state are suitable for the  
7 use required by the purchasing entity;

8 (c) The resident bidder is able to supply products produced in the  
9 state in sufficient quantity, as indicated in the invitation for bids; and

10 (d) (I) The resident bidder's bid or quoted price for products  
11 produced in the state does not exceed the lowest bid or price quoted for  
12 products produced outside the state or the resident bidder's bid or quoted  
13 price reasonably exceeds the lowest bid or price quoted for products  
14 produced outside the state.

15 (II) For purposes of this ~~paragraph (d)~~ SUBSECTION (2)(d),  
16 "reasonably exceeds" shall occur when the head of the governmental  
17 body, or other public officer charged by law with the duty to purchase  
18 such products, at his or her sole discretion, determines such higher bid to  
19 be reasonable and capable of being paid out of that governmental body's  
20 existing budget, without any further supplemental or additional  
21 appropriation.

22 (3) (a) For purposes of this section, an agricultural product is  
23 produced in the state if it is grown, raised, or processed in the state.

24 (b) A resident bidder that seeks to qualify for the preference  
25 created by subsection (1) of this section shall certify to the governmental  
26 body inviting the bid and provide documentation confirming that the  
27 resident bidder's agricultural product was produced in the state. The



1 governmental body may rely in good faith on such certification and  
2 documentation.

3 ~~(4) A governmental body shall report to the joint budget~~  
4 ~~committee of the general assembly, or any successor committee, any cost~~  
5 ~~increases associated with the provisions of this section during the~~  
6 ~~previous fiscal year.~~

7 ~~(5) This section shall apply to contracts governed by the~~  
8 ~~"Procurement Code" in articles 101 to 112 of title 24, C.R.S.~~

9 **24-103-908. Bid preferences - resident bidder - public projects**  
10 **- report - federal and state law - definitions. (1) [Formerly 8-19-102]**

11 As used in this article SECTION, unless the context otherwise requires,

12 ~~(1) "Nonresident bidder" means a bidder that does not satisfy the~~  
13 ~~criteria to be a resident bidder.~~

14 ~~(2) "public project" means:~~

15 ~~(a) Any public project as defined in section 24-92-102 (8), C.R.S.,~~  
16 ~~including any such project awarded by any county, including any home~~  
17 ~~rule county, municipality, as defined in section 31-1-101 (6), C.R.S.,~~  
18 ~~school district, special district, or other political subdivision of the state;~~

19 ~~(b) Any publicly funded contract for construction entered into by~~  
20 ~~a governmental body of the executive branch of this state which is subject~~  
21 ~~to the "Procurement Code", articles 101 to 112 of title 24, C.R.S. THIS~~  
22 ~~CODE; and~~

23 ~~(c) Any highway or bridge construction, whether undertaken by~~  
24 ~~the department of transportation or by any political subdivision of this~~  
25 ~~state, in which the expenditure of funds may be reasonably expected to~~  
26 ~~exceed fifty thousand dollars.~~

27 ~~(3) "Resident bidder" means:~~

1           ~~(a) A person, partnership, corporation, or joint venture which is~~  
2 ~~authorized to transact business in Colorado and which maintains its~~  
3 ~~principal place of business in Colorado; or~~

4           ~~(b) A person, partnership, corporation, or joint venture which:~~  
5           ~~(I) Is authorized to transact business in Colorado;~~  
6           ~~(II) Maintains a place of business in Colorado; and~~  
7           ~~(III) Has paid Colorado unemployment compensation taxes in at~~  
8 ~~least six of the eight quarters immediately prior to bidding on a~~  
9 ~~construction contract for a public project.~~

10           (2) (a) **[Formerly 8-19-101 (1)]** When a construction contract for  
11 a public project is to be awarded to a bidder, a resident bidder shall be  
12 allowed a preference against a nonresident bidder from a state or foreign  
13 country equal to the preference given or required by the state or foreign  
14 country in which the nonresident bidder is a resident.

15           (b) **[Formerly 8-19-101 (2)]** If it is determined by the officer  
16 PROCUREMENT AGENT responsible for awarding the bid that compliance  
17 with this section may cause denial of federal moneys which would  
18 otherwise be available or would otherwise be inconsistent with  
19 requirements of federal law, this section shall be suspended, but only to  
20 the extent necessary to prevent denial of the moneys or to eliminate the  
21 inconsistency with federal requirements.

22           (3) (a) **[Formerly 8-19-104 (1)]** The executive director of the  
23 department of personnel, or the executive director's designee, shall USE  
24 A NATIONAL REGISTRY OF BIDDING PREFERENCES PUBLISHED BY ANOTHER  
25 STATE OR NATIONAL ORGANIZATION OR SHALL conduct a survey and  
26 compile the results into a list of which states provide a bidding preference  
27 on public works contracts for their resident bidders. The list must include

1 details on the type of preference provided by each state, the amount of the  
2 preference, and how the preference is applied. The executive director  
3 shall complete the initial list on or before July 1, 2014, shall update the  
4 list periodically as needed but at least on an annual basis, and shall make  
5 the list available to the public on the department's website.

6 (b) **[Formerly 8-19-104 (2)]** In any bidding process for public  
7 works in which a bid is received from a bidder who is not a resident  
8 bidder and who is from a state that provides a percentage bidding  
9 preference to resident bidders of that state, a comparable percentage  
10 disadvantage shall be applied to the bid of that bidder.

11 (c) **[Formerly 8-19-104 (3)]** Any request for proposals issued by  
12 a state agency or political subdivision of the state must include a notice  
13 to nonresident bidders that if the nonresident bidder is from a state that  
14 provides a bidding preference to bidders from that state, then a  
15 comparable percentage disadvantage will be applied to the bid of that  
16 nonresident bidder. The notice must also specify that the bidder may  
17 obtain additional information from the department of personnel's website.

18 (d) **[Formerly 8-19-104 (4)]** The executive director of the  
19 department of personnel ~~shall~~ MAY promulgate rules necessary for the  
20 implementation of this section. Such rules shall be promulgated in  
21 accordance with the "State Administrative Procedure Act", article 4 of  
22 THIS title 24. ~~C.R.S.~~

23 (4) **[Formerly 8-19-105]** Nothing in this ~~article~~ SECTION applies  
24 to any project that receives federal moneys. In addition, nothing in this  
25 ~~article~~ SECTION contravenes any existing treaty, law, agreement, or  
26 regulation of the United States. Contracts entered into in accordance with  
27 any treaty, law, agreement, or regulation of the United States do not

1 violate this ~~article~~ SECTION to the extent of that accordance. The  
2 requirements of this ~~article~~ SECTION are suspended if such requirement  
3 would contravene any treaty, law, agreement, or regulation of the United  
4 States, or would cause denial of federal moneys or preclude the ability to  
5 access federal moneys that would otherwise be available.

6 **24-103-909. [Formerly 8-19.5-101] Bid preference - recycled**  
7 **plastic products.** (1) When a contract is to be awarded ~~in a public~~  
8 ~~project~~ PURSUANT TO THIS CODE, a bidder who has used recycled plastics  
9 in the manufacture of the commodity or supplies described in the bid shall  
10 be allowed a preference of up to five percent for finished products which  
11 contain no less than ten percent recycled plastics.

12 (2) If it is determined by the ~~officer~~ PROCUREMENT AGENT  
13 responsible for awarding a bid that compliance with this section may  
14 cause denial of federal moneys which would otherwise be available or  
15 would otherwise be inconsistent with requirements of federal law, this  
16 section shall be suspended, but only to the extent necessary to prevent  
17 denial of the moneys or to eliminate the inconsistency with federal  
18 requirements.

19 ~~(3) For purposes of this section, "public project" means any~~  
20 ~~publicly funded contract entered into by a governmental body of the~~  
21 ~~executive branch of this state which is subject to the "Procurement Code",~~  
22 ~~articles 101 to 112 of title 24, C.R.S.~~

23 **24-103-910. [Formerly 24-103-210] Use of foreign-produced**  
24 **goods - iron, steel, and related manufactured products - disclosure -**  
25 **report - definitions.** (1) The contractor for any public works project that  
26 is funded by a state agency as defined in section 24-30-1301 (17) or by a  
27 state institution of higher education as defined in section 24-30-1301 (18),

1 that does not receive any federal moneys, and that costs more than five  
2 hundred thousand dollars shall, upon completion of the project, make a  
3 good faith effort to disclose to the department of personnel the five most  
4 costly goods incorporated into the project, including iron, steel, or related  
5 manufactured goods; except that, for public projects under the  
6 supervision of the department of transportation, the contractor shall  
7 disclose such information to the department of transportation.

8 (2) (a) In the case of an iron or steel product, the product will be  
9 considered manufactured in the United States if all of the manufacturing  
10 processes for the final product take place in the United States.

11 (b) In the case of a manufactured good, a good will be considered  
12 manufactured in the United States if all of the manufacturing processes  
13 for the final product take place in the United States irrespective of the  
14 origin of the manufactured good's subcomponents.

15 (c) In order for a manufactured good to be considered subject to  
16 disclosure under this ~~article~~ ARTICLE 103, the product must be  
17 manufactured predominantly of steel or iron. The manufactured good is  
18 deemed a product manufactured predominantly of steel or iron if the  
19 product consists of more than fifty percent steel or iron content when it  
20 is delivered to the job site for installation.

21 (3) The disclosure must state the total cost and country of origin  
22 of the five most costly goods used on a project, including iron, steel, and  
23 related manufactured goods described pursuant to subsections (1) and (2)  
24 of this section. The contractor may rely on documents provided by  
25 third-party vendors when disclosing the country of origin of iron, steel,  
26 or related manufactured goods. In addition, the disclosure must state  
27 whether the public works project was subject to any existing domestic

1 content preference, including 41 U.S.C. secs. 8301 to 8305, 23 U.S.C.  
2 sec. 313, 49 U.S.C. sec. 5323, 49 U.S.C. sec. 24305, 49 U.S.C. sec.  
3 24405, and 49 U.S.C. secs. 50101 to 50105. The contractor shall disclose  
4 the information in a manner to be determined by the department.

5 (4) The department shall issue an annual report detailing the  
6 information that contractors submitted to the department and to the  
7 department of transportation pursuant to subsections (1) to (3) of this  
8 section. The report must include aggregate data collected for the calendar  
9 year and analysis of the data broken down by product and public works  
10 project type. The report shall not publicly disclose any proprietary  
11 information provided by the contractor that is not subject to disclosure  
12 pursuant to the "Colorado Open Records Act", part 2 of article 72 of this  
13 ~~title~~ TITLE 24. The department shall make the report available to the  
14 public on the department's website.

15 (5) As used in this section, unless the context otherwise requires:

16 (a) "Country of origin" shall have the meaning ascribed to it under  
17 19 U.S.C. sec. 1304 and 19 CFR 134.

18 (b) "Public works" shall have the same meaning as "public  
19 project" as defined in section 24-92-102 (8)(a).

20 (c) "United States" means the United States of America and  
21 includes all territory, continental or insular, subject to the jurisdiction of  
22 the United States.

23 (6) Nothing in this section applies to any project that receives  
24 federal moneys. In addition, nothing in this section contravenes any  
25 existing treaty, law, agreement, or regulation of the United States.  
26 Contracts entered into in accordance with any treaty, law, agreement, or  
27 regulation of the United States do not violate this section to the extent of

1 that accordance. The requirements of this section are suspended if such  
2 requirements would contravene any treaty, law, agreement, or regulation  
3 of the United States, or would cause denial of federal moneys or preclude  
4 the ability to access federal moneys that would otherwise be available.

5 **SECTION 28.** In Colorado Revised Statutes, **amend** 24-104-201  
6 as follows:

7 **24-104-201. Executive director - rules.** The executive director  
8 ~~shall~~ MAY promulgate rules governing the preparation, maintenance, and  
9 content of specifications for supplies, services, and construction required  
10 by the state.

11 **SECTION 29.** In Colorado Revised Statutes, **amend** 24-104-202  
12 as follows:

13 **24-104-202. Duties of the chief procurement officer -**  
14 **specifications.** The ~~executive director~~ CHIEF PROCUREMENT OFFICER shall  
15 prepare, issue, revise, maintain, and monitor the use of specifications for  
16 supplies, services, and construction required by the state.

17 **SECTION 30.** In Colorado Revised Statutes, **amend** 24-104-204  
18 as follows:

19 **24-104-204. Relationship with using agencies.** The ~~executive~~  
20 ~~director~~ CHIEF PROCUREMENT OFFICER may obtain expert advice and  
21 assistance from personnel of using agencies in the development of  
22 specifications and may delegate, in writing, to a using agency the  
23 authority to prepare and utilize its own specifications.

24 **SECTION 31.** In Colorado Revised Statutes, **add with amended**  
25 **and relocated provisions** 24-104-208 as follows:

26 **24-104-208. [Formerly 24-103-209] Purchase of compost by**  
27 **governmental bodies - definitions.** (1) In addition to any other

1 applicable requirement specified in the code, no compost may be  
2 purchased by a governmental body ~~as defined in section 24-101-301,~~  
3 unless the compost satisfies minimum standards specified by the  
4 department of agriculture.

5 (2) For purposes of this section, "compost" means a substance  
6 derived from a process of biologically degrading organic materials that  
7 contains one or more essential available plant nutrients and that complies  
8 with minimum standards for the identification of such substance specified  
9 by the commissioner of agriculture by rule.

10 **SECTION 32.** In Colorado Revised Statutes, **amend** 24-105-101  
11 as follows:

12 **24-105-101. Responsibility for selection of methods of**  
13 **construction contracting management.** The executive director ~~shall~~  
14 MAY promulgate rules providing for as many alternative methods of  
15 construction contracting management as he OR SHE may determine to be  
16 feasible. These rules ~~shall~~ MAY set forth criteria to be used in determining  
17 which method of construction contracting management is to be used for  
18 a particular project, grant to the head of a division within the department  
19 or the ~~head of a purchasing agency which~~ PROCUREMENT OFFICIAL WHO  
20 is responsible for carrying out the construction project the discretion to  
21 select the appropriate method of construction contracting management for  
22 a particular project, and require the procurement ~~officer~~ AGENT to execute  
23 and include in the contract file a written statement setting forth the facts  
24 which led to the selection of a particular method of construction  
25 contracting management for each project.

26 **SECTION 33.** In Colorado Revised Statutes, 24-105-201, **amend**  
27 (1) as follows:



1           **24-105-201. Bid security.** (1) Bid security shall be required for  
2 all ~~competitive sealed bidding~~ INVITATIONS FOR BIDS for construction  
3 contracts when the price is estimated by the procurement ~~officer~~ AGENT  
4 to exceed fifty thousand dollars. Bid security shall be a bond provided by  
5 a surety company authorized to do business in this state, the equivalent in  
6 cash, or otherwise supplied in a form satisfactory to the state. Nothing in  
7 this subsection (1) prevents the requirement of such bonds on  
8 construction contracts under fifty thousand dollars.

9           **SECTION 34.** In Colorado Revised Statutes, 24-105-301, **amend**  
10 (1) introductory portion and (4) as follows:

11           **24-105-301. Contract clauses and their administration.**

12 (1) The executive director ~~shall~~ MAY promulgate rules requiring the  
13 inclusion in state construction contracts of clauses providing for  
14 adjustments in prices, time of performance, and other appropriate contract  
15 provisions affected by and covering the following subjects:

16           (4) The contract clauses promulgated under this section ~~shall~~ MAY  
17 be set forth in rules; except that such rules shall be consistent with section  
18 24-91-103.5 (1) and (2). However, the head of a division within the  
19 department designated by the executive director or the ~~head of a~~  
20 ~~purchasing agency~~ PROCUREMENT OFFICIAL may vary the clauses for  
21 inclusion in any particular state construction contract so long as any  
22 variations are supported by a written determination that describes the  
23 circumstances justifying such variations and notice of any material  
24 variation is stated in the invitation for bids or request for proposals. No  
25 variation that is inconsistent with section 24-91-103.5 (1) and (2) shall be  
26 made pursuant to this subsection (4).

27           **SECTION 35.** In Colorado Revised Statutes, **amend** 24-105-302

1 as follows:

2 **24-105-302. Fiscal responsibility.** Every contract modification  
3 ~~change order~~, or contract price adjustment under a construction contract  
4 with the state in excess of an amount specified in the contract shall be  
5 subject to prior written certification by the controller or other official  
6 responsible for monitoring and reporting upon the status of the costs of  
7 the total project or contract budget as to the effect of the contract  
8 modification ~~change order~~, or adjustment in contract price on the total  
9 project or contract budget. In the event that the certification of the  
10 controller or other responsible official discloses a resulting increase in the  
11 total project or contract budget, the procurement officer AGENT shall not  
12 execute or make such contract modification ~~change order~~, or adjustment  
13 in contract price unless sufficient funds are available therefor or the scope  
14 of the project or contract is adjusted so as to permit the degree of  
15 completion that is feasible within the total project or contract budget as  
16 it existed prior to the contract modification ~~change order~~, or adjustment  
17 in contract price under consideration; except that, with respect to the  
18 validity of any executed contract modification ~~change order~~, or  
19 adjustment in contract price which the contractor has reasonably relied  
20 upon, it shall be presumed that there has been compliance with the  
21 provisions of this section.

22 **SECTION 36.** In Colorado Revised Statutes, 24-106-101, **amend**  
23 (3)(d) and (4) as follows:

24 **24-106-101. Contract clauses - price adjustments - additional**  
25 **clauses - modification.** (3) The executive director may promulgate rules  
26 including, but not limited to, rules permitting or requiring the inclusion  
27 in state contracts of clauses providing for appropriate remedies and

1 covering the following subjects:

2 (d) Termination of the contract in whole or in part for the  
3 ~~convenience~~ PUBLIC INTEREST of the state.

4 (4) Any contract clauses promulgated under this section ~~shall~~ MAY  
5 be set forth in rules; except that such rules shall be consistent with section  
6 24-91-103.5 (1) and (2). However, the executive director or the ~~head of~~  
7 ~~a purchasing agency~~ PROCUREMENT OFFICIAL may vary the clauses for  
8 inclusion in any particular state contract so long as any variations are  
9 supported by a written determination that describes the circumstances  
10 justifying such variations and notice of any material variation is stated in  
11 the invitation for bids or request for proposals. No variation that is  
12 inconsistent with section 24-91-103.5 (1) and (2) shall be made pursuant  
13 to this subsection (4).

14 **SECTION 37.** In Colorado Revised Statutes, **add with amended**  
15 **and relocated provisions** 24-106-102, 24-106-103, 24-106-104,  
16 24-106-105, 24-106-106, 24-106-107, and 24-106-108 as follows:

17 **24-106-102. [Formerly 24-101-103] Supplementary general**  
18 **principles of law applicable.** Unless displaced by the particular  
19 provisions of this code, the principles of law and equity, including the  
20 "Uniform Commercial Code", the law merchant, and any law relative to  
21 capacity to contract, agency, fraud, misrepresentation, duress, coercion,  
22 mistake, or bankruptcy shall supplement the provisions of this code.

23 **24-106-103. [Formerly 24-102-205] Centralized contract**  
24 **management system - personal services contracts - legislative**  
25 **declaration - definitions.** (1) (a) The general assembly hereby finds and  
26 declares that by enacting this section the general assembly intends to  
27 CENTRALIZE THE LOCATION OF INFORMATION ABOUT PERSONAL SERVICES

1 CONTRACTS AND PROVIDE FOR LEGISLATIVE, EXECUTIVE, AND PUBLIC  
2 ACCESS TO ALL PERSONAL SERVICES CONTRACTS ENTERED INTO BY ANY  
3 GOVERNMENTAL BODY.

4 ~~(I) Establish a policy of open competition for personal services~~  
5 ~~contracts unless the competition is specifically exempted under this~~  
6 ~~section;~~

7 ~~(II) Provide for legislative and executive review of all personal~~  
8 ~~services contracts entered into by any governmental body;~~

9 ~~(III) Centralize the location of information about personal services~~  
10 ~~contracts for the purpose of facilitating public review of such contracts;~~  
11 ~~and~~

12 ~~(IV) Ensure the proper accounting of expenditures for personal~~  
13 ~~services.~~

14 (b) For purposes of this section, "governmental body" shall have  
15 the same meaning as set forth in ~~section 24-101-301 (10)~~ SECTION  
16 24-101-301 (19); except that, for purposes of this section, "governmental  
17 body" shall also include elected officials.

18 ~~(c) (Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p.~~  
19 ~~1852, § 31, effective June 9, 2010.)~~

20 (2) This section shall apply to any personal services contract to  
21 which the state is a party the value of which exceeds one hundred  
22 thousand dollars with the exception of any contract to which the state is  
23 a party under medicare, the "Colorado Medical Assistance Act", articles  
24 4 to 6 of title 25.5, ~~C.R.S.~~, the "Children's Basic Health Plan Act", article  
25 8 of title 25.5, ~~C.R.S.~~, or the "Colorado Indigent Care Program", part 1 of  
26 article 3 of title 25.5. ~~C.R.S.~~

27 (3) (a) On or before June 30, 2009, the department shall

1 implement and maintain a centralized contract management system for  
2 the purpose of monitoring all personal services contracts entered into by  
3 a governmental body that are subject to the requirements of this section.  
4 With respect to each contract entered into by a governmental body,  
5 information contained in the system shall include, without limitation, the  
6 following:

7 (I) The governmental body that entered into the personal services  
8 contract;

9 (II) The persons or entities with which the governmental body is  
10 contracting;

11 ~~(III) The duration and number of positions on the state payroll  
12 created directly or indirectly as a result of any personal services contract;~~

13 ~~(IV)~~ (III) The purpose of the personal services contract;

14 ~~(V)~~ (IV) The effective dates, ~~periods of performance~~ EXPIRATION  
15 DATES, and any renewal ~~terms~~ PERIODS of the personal services contract;

16 ~~(VI)~~ (V) The vendor selection method upon which the personal  
17 services contract was awarded, whether competitively procured, awarded  
18 on a sole-source basis, or otherwise. Where the contract has been awarded  
19 on a sole-source basis, the governmental body shall certify that the  
20 governmental body has followed the requirements of subsection (5) of  
21 this section.

22 ~~(VII)~~ (VI) The total ~~value~~ AMOUNT of the personal services  
23 contract and any amendments to the contract;

24 ~~(VIII) In accordance with the requirements of subsection (6) of  
25 this section, an evaluation following completion of the personal services  
26 contract that measures the vendor's performance in meeting contractual  
27 requirements relating to quality, cost, and deadlines;~~

1           ~~(IX)~~ (VII) Whether any services under the personal services  
2 contract, or any subcontracts to the contract that directly relate to the  
3 services provided under the contract, are anticipated to be performed  
4 outside the United States or the state as disclosed in the statement of work  
5 pursuant to section 24-102-206 and the vendor's justification for obtaining  
6 services outside the United States or the state in accordance with the  
7 requirements of section 24-102-206; and

8           ~~(X)~~ (VIII) Upon completion of the personal services contract, the  
9 extent as disclosed by the vendor to which any services under the  
10 contract, or any subcontracts to the contract that directly relate to the  
11 services provided under the contract, were performed outside the United  
12 States or the state.

13           (b) Each governmental body shall be responsible for gathering  
14 relevant information ~~to be submitted to the department~~ for inclusion in the  
15 centralized contract management system in accordance with the  
16 requirements of ~~paragraph (a) of this subsection~~ ~~(3)~~ SUBSECTION (3)(a) OF  
17 THIS SECTION.

18           (c) The centralized contract management system required to be  
19 maintained by the department pursuant to ~~paragraph (a) of this subsection~~  
20 ~~(3)~~ SUBSECTION (3)(a) OF THIS SECTION shall be a publicly available  
21 database of all personal services contracts entered into by any  
22 governmental body, accessible from the website maintained by the state.  
23 Information concerning contracts contained in the database and accessible  
24 on the website shall be searchable by criteria enumerated in  
25 subparagraphs (I) to ~~(X)~~ (VIII) of ~~paragraph (a) of this subsection~~ ~~(3)~~  
26 SUBSECTION (3)(a) OF THIS SECTION. Information in the database shall be  
27 either presented in plain and nontechnical language or by means of key

1 terms that are clearly and easily defined.

2 ~~(d) The centralized contract management system required to be~~  
3 ~~maintained by the department pursuant to paragraph (a) of this subsection~~  
4 ~~(3) shall identify the number of employment positions to be filled under~~  
5 ~~any personal services contract that was previously performed by classified~~  
6 ~~civil service employees, in addition to the total number of positions, if~~  
7 ~~any, eliminated by the contract. In the case of any contract that is more~~  
8 ~~than one year in duration, the system shall identify the cost savings, if~~  
9 ~~any, and quality improvements, if any, realized by the state as a result of~~  
10 ~~the contract.~~

11 ~~(e) (d)~~ Any new personal services contracts subject to the  
12 requirements of this section shall be added to the centralized contract  
13 management system maintained by the department pursuant to ~~paragraph~~  
14 ~~(a) of this subsection (3)~~ SUBSECTION (3)(a) OF THIS SECTION not more  
15 than thirty days after the execution of the contract.

16 (4) The centralized contract management system required to be  
17 maintained by the department pursuant to ~~paragraph (a) of subsection (3)~~  
18 SUBSECTION (3)(a) of this section shall include information concerning  
19 personal services expenditures by the governmental body and types of  
20 services. The types of services that may be designated shall include,  
21 without limitation, professional technical, nonprofessional support,  
22 purchased services, architectural, engineering and construction trades, and  
23 professional equipment repair.

24 (5) ~~(a) Subject to the provisions of paragraph (b) of this~~  
25 ~~subsection (5);~~ Prior to entering into a sole-source personal services  
26 contract, the governmental body shall attempt to identify competing  
27 vendors by placing a notice on the state's ~~bid notification website~~

1 ELECTRONIC PROCUREMENT SYSTEM for not less than three business days.  
2 If the governmental body receives ~~not less than two~~ ANY responses to the  
3 notice from qualified and responsible vendors that are able to meet the  
4 specifications identified in the notice and that are not otherwise  
5 prohibited from bidding on the contract, the sole-source selection method  
6 shall not be used.

7 ~~(b) Notwithstanding the requirements of paragraph (a) of this~~  
8 ~~subsection (5), the director of a governmental body or his or her designee~~  
9 ~~may enter into or authorize others to enter into an emergency sole-source~~  
10 ~~personal services contract on behalf of the governmental body where an~~  
11 ~~emergency condition is present and a sole-source personal services~~  
12 ~~contract is necessary to ensure that the required services are obtained in~~  
13 ~~sufficient time to address the emergency. Where the governmental body~~  
14 ~~enters into an emergency sole-source personal services contract pursuant~~  
15 ~~to this paragraph (b), the centralized contract management system~~  
16 ~~required by paragraph (a) of subsection (3) of this section, and any~~  
17 ~~contract file maintained thereunder, shall include a written determination~~  
18 ~~that specifies the basis for the determination that an emergency condition~~  
19 ~~is present and the basis for the selection of the vendor retained to perform~~  
20 ~~the sole-source contract. A sole-source personal services contract~~  
21 ~~authorized pursuant to this paragraph (b) shall be limited to the quantity~~  
22 ~~of personal services and duration necessary to address the emergency.~~

23 ~~(c) For purposes of paragraph (b) of this subsection (5),~~  
24 ~~"emergency condition" means a situation that creates an imminent threat~~  
25 ~~to the public health, welfare, or safety as may arise by reason of, without~~  
26 ~~limitation, a flood, epidemic, riot, catastrophic equipment failure or~~  
27 ~~similar threat to the public health, welfare, or safety as determined by the~~



1 director of the governmental body or his or her designee.

2 ~~(6) Upon the completion of each personal services contract, the~~  
3 ~~governmental body that was a party to the contract shall evaluate the~~  
4 ~~vendor that performed the contract. The evaluation performed by the~~  
5 ~~governmental body shall be submitted to the vendor to allow the vendor~~  
6 ~~to review the evaluation and to submit any comments in response to the~~  
7 ~~evaluation, after which point the evaluation, including any response~~  
8 ~~submitted by the vendor, shall be added to the centralized contract~~  
9 ~~management system maintained by the department pursuant to paragraph~~  
10 ~~(a) of subsection (3) of this section. The evaluation shall become publicly~~  
11 ~~available thirty days after completion of the contract. The evaluation shall~~  
12 ~~measure, without limitation, the performance of the vendor in meeting~~  
13 ~~contractual requirements relating to quality, cost, and deadlines. If the~~  
14 ~~vendor disputes any information contained in the evaluation, the vendor~~  
15 ~~may exercise the contract dispute rights specified in section 24-109-106,~~  
16 ~~24-109-107, 24-109-201, or 24-109-202. If, upon completion of an appeal~~  
17 ~~filed with the executive director or the Denver district court, as~~  
18 ~~applicable, the vendor is not satisfied with the resolution of the appeal,~~  
19 ~~the vendor may file a rebuttal statement that shall be maintained as part~~  
20 ~~of the vendor evaluation record. The vendor's sole remedy in contesting~~  
21 ~~any evaluation shall be removal of the evaluation, correction of the~~  
22 ~~evaluation, or submission of the rebuttal statement in accordance with the~~  
23 ~~requirements of this subsection (6).~~

24 ~~(7)(a) Commencing on September 30, 2007, until such time as the~~  
25 ~~development of the system created in paragraph (a) of subsection (3) of~~  
26 ~~this section is complete, the department shall provide reports on a~~  
27 ~~quarterly basis to the joint budget committee of the general assembly~~

1 concerning the status of the development of the system.

2 (b) The department shall annually report information on personal  
3 services contracts contained in the centralized contract management  
4 system created in paragraph (a) of subsection (3) of this section to the  
5 standing legislative committees of reference in each house of the general  
6 assembly with oversight responsibilities over the department's affairs.

7 (c) With respect to any sole-source personal services contract  
8 identified in the system required to be maintained by the department  
9 pursuant to paragraph (a) of subsection (3) of this section, the department  
10 shall submit an annual report to the legislative council of the general  
11 assembly created in section 2-3-301 (1), C.R.S., concerning any new  
12 contract entered into by the state during the prior calendar year. Each  
13 report shall describe, without limitation, the following:

14 (I) The number and aggregate value of the sole-source personal  
15 services contracts for each category of services specified in subsection (4)  
16 of this section; and

17 (H) The justification provided by the governmental body for the  
18 use of the sole-source contracting provisions in section 24-103-205 and  
19 the steps taken to determine if a vendor is the only available source for  
20 the required supply, service, or construction item.

21 (8) The implementation of the database required to be maintained  
22 by the department pursuant to paragraph (a) of subsection (3) of this  
23 section shall be funded in two phases, with a portion of the funding  
24 provided in the 2007-08 state fiscal year, and a portion of the funding  
25 provided in the 2008-09 state fiscal year.

26 (9) To accomplish the legislative intent underlying subparagraph  
27 (HH) of paragraph (a) of subsection (1) of this section, the office of

1 ~~contract administration is hereby created in the department, which office~~  
2 ~~shall be funded within existing appropriations.~~

3 **24-106-104. [Formerly 24-103-501] Types of contracts.** Subject  
4 to the limitations of this section, any type of contract which will promote  
5 the best interests of the state may be used; except that the use of a  
6 cost-plus-a-percentage-of-cost contract is prohibited. A  
7 CONTINGENCY-BASED CONTRACT MAY BE USED ONLY UPON APPROVAL BY  
8 THE GOVERNOR'S OFFICE OF STATE PLANNING AND BUDGETING PURSUANT  
9 TO SECTION 24-17-204. A cost-reimbursement contract may be used only  
10 when a determination is made in writing that such contract is likely to be  
11 less costly to the state than any other type of contract or that it is  
12 impracticable to obtain the supplies, services, or construction required  
13 unless the cost-reimbursement contract is used.

14 **24-106-105. [Formerly 24-103-503] Multiyear contracts.**  
15 (1) Unless otherwise provided by law, a contract for supplies or services  
16 may be entered into for any period of time deemed to be in the best  
17 interests of the state if the term of the contract and conditions of renewal  
18 or extension, if any, are included in the solicitation and if funds are  
19 available for the first year at the time of contracting. IF THE TERM OF THE  
20 CONTRACT WAS NOT INCLUDED IN THE SOLICITATION AND THE CHIEF  
21 PROCUREMENT OFFICER DETERMINES THAT AN EXTENSION OF THE  
22 CONTRACT IS IN THE BEST INTEREST OF THE GOVERNMENTAL BODY, THEN  
23 THE CHIEF PROCUREMENT OFFICER MAY APPROVE A LONGER TERM FOR A  
24 REASONABLE TIME. The state shall initiate the renewal or extension of a  
25 contract for supplies or services. Payment and performance obligations  
26 for succeeding fiscal years shall be subject to the availability and  
27 appropriation of funds therefor.

1 (2) Prior to the utilization of a multiyear contract, it shall be  
2 determined in writing:

3 (a) That estimated requirements cover the period of the contract  
4 and are reasonably firm and continuing; and

5 (b) That such a contract will serve the best interests of the state by  
6 encouraging effective competition or otherwise promoting economies in  
7 state procurement.

8 (3) When funds are not appropriated or otherwise made available  
9 to support continuation of performance in a subsequent fiscal year, the  
10 contract shall be cancelled, and the contractor may be reimbursed for the  
11 reasonable value of any nonrecurring costs incurred but not amortized in  
12 the price of the supplies or services delivered under the contract.

13 **24-106-106. [Formerly 24-103-601] Right to audit records.**

14 ~~(1) (Deleted by amendment, L. 2007, p. 1237, § 2, effective August 3,~~  
15 ~~2007.)~~

16 ~~(2)~~ The state shall be entitled to audit the books and records of any  
17 contractor or subcontractor under any negotiated contract or subcontract  
18 to the extent that the books and records relate to the performance of a  
19 state contract or subcontract, if the state is able, in conducting any such  
20 audit, to maintain the confidentiality of any information contained in the  
21 books and records that is deemed proprietary as determined by the state.  
22 Such books and records shall be maintained by the contractor for a period  
23 of ~~three~~ SIX years after the date of final payment under the prime contract  
24 and by the subcontractor for a period of ~~three~~ SIX years after the date of  
25 final payment under the subcontract, unless a shorter period is otherwise  
26 authorized in writing.

27 **24-106-107. [Formerly 24-103.5-101] Monitoring of vendor**

1 **performance - definitions.** (1) (a) For purposes of this section,  
2 "governmental body" ~~shall have~~ HAS the same meaning as set forth in  
3 ~~section 24-101-301 (10)~~ SECTION 24-101-301 (19); except that, for  
4 purposes of this section, "governmental body" shall also include elected  
5 officials.

6 (b) ~~(Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p.~~  
7 ~~1853, § 32, effective June 9, 2010.)~~

8 (2) Each personal services contract entered into pursuant to this  
9 code with a value of one hundred thousand dollars or more shall contain:

10 (a) Performance measures and standards developed specifically  
11 for the contract by the governmental body administering the contract. The  
12 performance measures and standards shall be negotiated by the  
13 governmental body and the vendor prior to execution of the contract and  
14 shall be incorporated into the contract. The measures and standards shall  
15 be used by the governmental body to evaluate the performance of ~~the~~  
16 ~~governmental body and~~ the vendor under the contract.

17 (b) An accountability section that requires the vendor to report  
18 regularly on achievement of the performance measures and standards  
19 specified in the contract and that allows the governmental body to  
20 withhold payment until successful completion of all or part of the contract  
21 and the achievement of established performance standards. The  
22 accountability section shall include a requirement that payment by the  
23 governmental body to the vendor shall be made without delay upon  
24 successful completion of all or any part of the contract in accordance with  
25 the payment schedule specified in the contract or as otherwise agreed  
26 upon by the parties.

27 (c) Monitoring requirements that specify how the governmental

1 body and the vendor will evaluate each others' performance, including  
2 progress reports, site visits, inspections, and reviews of performance data.  
3 The governmental body shall use one or more monitoring processes to  
4 ensure that the results, objectives, and obligations of the contract are met.

5 (d) Methods and mechanisms to resolve any situation in which the  
6 governmental body's monitoring assessment determines noncompliance,  
7 including termination of the contract.

8 (3) Each governmental body administering the personal services  
9 contract shall, within existing resources of the governmental body,  
10 designate ~~at least one person~~ A CONTRACT MANAGER WITH SUBJECT  
11 MATTER EXPERTISE within the governmental body responsible for  
12 ~~monitoring whether the criteria described in subsection (2) of this section~~  
13 ~~are met, whether and to what extent the contract was completed according~~  
14 ~~to the performance schedule specified in the contract, satisfaction of the~~  
15 ~~scope of the vendor's work as specified in the contract, and whether and~~  
16 ~~to what extent the vendor met or exceeded budgetary requirements under~~  
17 ~~the contract~~ DAY-TO-DAY MANAGEMENT OF THE CONTRACT, INCLUDING  
18 PERFORMANCE MONITORING.

19 ~~(4) Before the governmental body may enter into a personal~~  
20 ~~services contract, the person selected in subsection (3) of this section~~  
21 ~~shall certify that the proposed performance measures and standards, data~~  
22 ~~sources, and data collection methods provide a valid basis for assessing~~  
23 ~~the vendor's performance.~~

24 (5) ~~(4) In the case of a contract that has been renewed in a~~  
25 ~~subsequent fiscal year, the governmental body shall certify annually~~  
26 ~~whether the vendor on any contract is complying with the terms of the~~  
27 ~~contract. If the governmental body determines that the vendor has not~~

1 complied with the contract terms, including but not limited to  
2 performance standards and measurable outcomes, the state MAY PURSUE  
3 REMEDIES IN ACCORDANCE WITH ARTICLE 109 OF THIS TITLE 24 AND shall  
4 be entitled to any remedy available under law in the case of contract  
5 nonperformance, including but not limited to termination of the contract  
6 and the return of any and all payments made to the vendor by the state  
7 under the contract; except that the recovery of any moneys by the state  
8 shall be reduced by the value of any contractual benefits realized by the  
9 state from partial performance by the vendor under the contract. If a  
10 vendor is deemed to be in default under any one particular contract with  
11 the state, the state may, upon a showing of good cause, declare any or all  
12 other contracts it has entered into with the vendor to be in default.

13 ~~(6) The centralized contract management system required by~~  
14 ~~section 24-102-205 (3) (a) shall include such information as will allow~~  
15 ~~the executive director and the governmental body to evaluate the prior~~  
16 ~~record of a particular vendor in meeting performance measures and~~  
17 ~~standards under paragraph (a) of subsection (2) of this section in~~  
18 ~~connection with a personal services contract to which it has been a party.~~  
19 ~~If a particular vendor demonstrates a gross failure to meet such~~  
20 ~~performance measures and standards in connection with one or more~~  
21 ~~contracts to which it has been a party, the executive director, upon the~~  
22 ~~request of and with a showing of good cause by a governmental body,~~  
23 ~~may remove the name of the vendor from the database and prohibit the~~  
24 ~~vendor from bidding on future contracts. Upon a showing of good cause~~  
25 ~~by a vendor or governmental body, the executive director may reinstate~~  
26 ~~the name of the vendor to the database. If a vendor disputes the removal~~  
27 ~~of its name from the database or the prohibition of the vendor from~~

1 ~~bidding on future contracts, the vendor may exercise the debarment~~  
2 ~~protest and appeal rights specified in section 24-109-105, 24-109-107,~~  
3 ~~24-109-201, or 24-109-202. If, upon completion of an appeal filed with~~  
4 ~~the executive director or the Denver district court, as applicable, the~~  
5 ~~vendor is not satisfied with the resolution of the appeal, the vendor may~~  
6 ~~file a rebuttal statement that shall be maintained as part of the vendor~~  
7 ~~evaluation record. The vendor's sole remedy in contesting such removal~~  
8 ~~or prohibition shall be reversal of the debarment or submission of the~~  
9 ~~rebuttal statement in accordance with the requirements of this subsection~~  
10 ~~(6):~~

11 ~~(7) (5) Notwithstanding any other provision of this section,~~  
12 ~~(a) nothing in this section shall be construed to apply to any~~  
13 ~~contract to which the state is a party under medicare, the "Colorado~~  
14 ~~Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., the~~  
15 ~~"Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., or the~~  
16 ~~"Colorado Indigent Care Program", part 1 of article 3 of title 25.5. C.R.S.~~

17 ~~(b) The provisions of this section shall not take effect until the~~  
18 ~~centralized contract management system required by section 24-102-205~~  
19 ~~(3)(a) has been implemented.~~

20 **24-106-108. [Formerly 24-107-101] Administrative rules - cost**  
21 **reimbursement.** The executive director may promulgate rules setting  
22 forth cost principles which may be used to determine the allowability of  
23 incurred costs for the purpose of reimbursing costs under contract  
24 provisions which provide for the reimbursement of costs. ~~except that, if~~  
25 ~~a written determination is approved by a person who is in a higher~~  
26 ~~ranking employment position than a procurement officer, such cost~~  
27 ~~principles may be modified by contract.~~



1           **SECTION 38.** In Colorado Revised Statutes, **add** 24-106-109 and  
2 24-106-110 as follows:

3           **24-106-109. Terms and conditions in contracts.** ANY TERM OR  
4 CONDITION IN ANY CONTRACT ENTERED INTO BY THE STATE THAT  
5 REQUIRES THE STATE TO INDEMNIFY OR HOLD HARMLESS ANOTHER PERSON  
6 OR ENTITY, EXCEPT AS OTHERWISE SPECIFICALLY PERMITTED BY LAW, OR  
7 BY WHICH THE STATE AGREES TO BINDING ARBITRATION OR ANY OTHER  
8 BINDING EXTRA-JUDICIAL DISPUTE RESOLUTION PROCESS IN WHICH THE  
9 FINAL RESOLUTION IS NOT DETERMINED BY THE STATE, OR BY WHICH THE  
10 STATE AGREES TO LIMIT LIABILITY OF ANOTHER PERSON OR ENTITY FOR  
11 BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE PROPERTY OF THE  
12 STATE SHALL BE VOID AB INITIO; EXCEPT THAT THE CONTRACT  
13 CONTAINING THAT TERM OR CONDITION SHALL OTHERWISE BE  
14 ENFORCEABLE AS IF IT DID NOT CONTAIN SUCH TERM OR CONDITION. ALL  
15 CONTRACTS ENTERED INTO BY THE STATE, EXCEPT FOR CONTRACTS WITH  
16 ANOTHER GOVERNMENT, SHALL BE GOVERNED BY COLORADO LAW  
17 NOTWITHSTANDING ANY TERM OR CONDITION TO THE CONTRARY.

18           **24-106-110. Remedies not involving contract termination.**

19 (1) THE STATE, IN ITS SOLE DISCRETION, MAY EXERCISE ONE OR MORE OF  
20 THE FOLLOWING REMEDIES IN ADDITION TO OTHER REMEDIES AVAILABLE  
21 PURSUANT TO ARTICLE 109 OF THIS TITLE 24:

22           (a) SUSPEND A CONTRACTOR'S PERFORMANCE WITH RESPECT TO  
23 ALL OR ANY PORTION OF A STATE CONTRACT PENDING NECESSARY  
24 CORRECTIVE ACTION AS SPECIFIED BY THE STATE WITHOUT ENTITLING THE  
25 CONTRACTOR TO AN ADJUSTMENT IN THE PRICE OR PERFORMANCE  
26 SCHEDULE SPECIFIED IN THE CONTRACT. THE CONTRACTOR SHALL  
27 PROMPTLY CEASE PERFORMANCE AND SHALL INCUR COSTS IN

1 ACCORDANCE WITH THE STATE'S DIRECTIVE. THE STATE SHALL NOT BE  
2 LIABLE FOR COSTS INCURRED BY THE CONTRACTOR AFTER THE SUSPENSION  
3 OF PERFORMANCE PURSUANT TO THIS SUBSECTION (1)(a).

4 (b) WITHHOLD PAYMENT TO A CONTRACTOR UNTIL THE  
5 CORRECTIONS IN THE CONTRACTOR'S PERFORMANCE ARE SATISFACTORILY  
6 MADE AND COMPLETED; AND

7 (c) DENY PAYMENT FOR ANY OBLIGATIONS NOT PERFORMED THAT,  
8 DUE TO THE CONTRACTOR'S ACTIONS OR INACTIONS, CANNOT BE  
9 PERFORMED OR, IF PERFORMED, WOULD BE OF NO VALUE TO THE STATE;  
10 EXCEPT THAT ANY DENIAL OF PAYMENT SHALL BE REASONABLY RELATED  
11 TO THE VALUE TO THE STATE OF THE OBLIGATIONS NOT PERFORMED.

12 (2) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CODE, THE  
13 STATE MAY DEMAND IMMEDIATE REMOVAL FROM WORK ON THE  
14 CONTRACT OF ANY OF THE CONTRACTOR'S EMPLOYEES, AGENTS, OR  
15 SUBCONTRACTORS WHOM THE STATE DEEMS INCOMPETENT, CARELESS,  
16 INSUBORDINATE, UNSUITABLE, OR OTHERWISE UNACCEPTABLE, OR WHOSE  
17 CONTINUED PARTICIPATION UNDER THE STATE CONTRACT IS DEEMED TO  
18 BE CONTRARY TO THE PUBLIC INTEREST OR THE STATE'S BEST INTEREST.

19 **SECTION 39.** In Colorado Revised Statutes, **add 24-109-101.1**  
20 as follows:

21 **24-109-101.1. Definitions.** AS USED IN THIS ARTICLE 109, UNLESS  
22 THE CONTEXT OTHERWISE REQUIRES:

23 (1) "AGGRIEVED PARTY" MEANS ANY ACTUAL OR PROSPECTIVE  
24 BIDDER, OFFEROR, OR CONTRACTOR WHO BELIEVES THAT HE OR SHE HAS  
25 SUFFERED A DENIAL OF LEGAL RIGHTS UNDER THIS CODE IN CONNECTION  
26 WITH THE SOLICITATION OR AWARD OF A CONTRACT. FOR PURPOSES OF  
27 CONTRACT CONTROVERSIES, AN AGGRIEVED PARTY MAY ALSO BE THE

1 CONTRACTOR.

2 (2) "MATERIAL" MEANS AN ISSUE THAT, IF RESOLVED IN A MANNER  
3 CONTRARY TO THAT OF A PRIOR PROTEST OR ADMINISTRATIVE APPEAL,  
4 WOULD CHANGE THE AWARD OF A CONTRACT. THE PRESENCE OF MULTIPLE  
5 NONMATERIAL ISSUES IN A SOLICITATION OR AWARD DOES NOT  
6 CONSTITUTE A MATERIAL ISSUE.

7 **SECTION 40.** In Colorado Revised Statutes, **add with amended**  
8 **and relocated provisions** 24-109-101.5 as follows:

9 **24-109-101.5. [Formerly 24-109-101] Resolution of**  
10 **controversies.** (1) ~~The head of a purchasing agency~~ PROCUREMENT  
11 OFFICIAL or ~~a~~ HIS OR HER designee is authorized to settle and resolve any  
12 questions regarding:

13 (a) Any protest concerning the solicitation or award of a contract;

14 (b) Debarment or suspension from consideration for award of  
15 contracts; and

16 (c) Any controversy arising between the state and a contractor by  
17 virtue of a contract between them, including, without limitation,  
18 controversies based upon breach of contract, mistake, misrepresentation,  
19 or any other cause for contract modification or rescission.

20 (2) Any decision of the ~~head of a purchasing agency~~  
21 PROCUREMENT OFFICIAL or ~~a~~ HIS OR HER designee WITH RESPECT TO A  
22 MATERIAL ISSUE RAISED IN A PROTEST is subject to appeal ~~de novo to the~~  
23 ~~executive director or to the district court of the city and county of Denver~~  
24 ~~pursuant to the provisions of this article~~ PURSUANT TO PART 2 OF THIS  
25 ARTICLE 109.

26 (3) EXCEPT FOR APPEALS REFERRED TO THE OFFICE OF  
27 ADMINISTRATIVE COURTS PURSUANT TO SECTION 24-109-201, the

1 provisions of section 24-4-105 shall not apply to the administrative  
2 procedures established pursuant to this ~~article~~ ARTICLE 109.

3 **SECTION 41.** In Colorado Revised Statutes, **amend** 24-109-102  
4 as follows:

5 **24-109-102. Protested solicitations and awards.** (1) Any ~~actual~~  
6 ~~or prospective bidder, offeror, or contractor who is~~ aggrieved PARTY in  
7 connection with the solicitation or award of a contract may protest to the  
8 ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or ~~a~~ HIS OR HER  
9 designee. The protest OF AN INVITATION FOR BIDS OR A REQUEST FOR  
10 PROPOSALS shall be submitted in writing TO THE PROCUREMENT OFFICIAL  
11 OR HIS OR HER DESIGNEE within ~~seven working~~ TEN BUSINESS days after  
12 such aggrieved ~~person~~ PARTY knows or should have known of the facts  
13 giving rise thereto. THE PROTEST OF A SMALL PURCHASE SOLICITATION OR  
14 AWARD OF CONTRACT SHALL BE SUBMITTED IN WRITING TO THE  
15 PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE WITHIN THREE BUSINESS  
16 DAYS, UNLESS THE PROCUREMENT OFFICIAL OTHERWISE EXTENDS THE  
17 TIME PERIOD TO TEN BUSINESS DAYS, AFTER SUCH AGGRIEVED PARTY  
18 KNOWS OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE THERETO.

19 (2) The ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or  
20 ~~a~~ HIS OR HER designee shall have the authority to settle and resolve a  
21 protest of an aggrieved ~~bidder, offeror, or contractor, actual or~~  
22 ~~prospective~~, PARTY concerning the solicitation or award of a contract. A  
23 written decision regarding the protest shall be rendered within ~~seven~~  
24 ~~working~~ TEN BUSINESS days after the protest is filed. The decision shall  
25 be based on and limited to a review of the MATERIAL issues raised by the  
26 aggrieved ~~bidder, offeror, or contractor~~ PARTY and shall set forth each  
27 factor taken into account in reaching the decision. This authority shall be

1 exercised pursuant to rules promulgated BY THE EXECUTIVE DIRECTOR to  
2 provide for the expeditious resolution of the protest. REMEDIES AWARDED  
3 PURSUANT TO THIS DECISION, IF ANY, SHALL BE LIMITED TO THOSE SET  
4 FORTH IN PART 5 OF THIS ARTICLE 109.

5 (3) IF THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE DOES  
6 NOT ISSUE A WRITTEN DECISION REGARDING A SOLICITATION OR AWARD  
7 WITHIN THE PERIOD SPECIFIED IN THIS ARTICLE 109 OR WITHIN SUCH  
8 LONGER PERIOD AS MAY BE AGREED UPON BY THE PROCUREMENT OFFICIAL  
9 AND THE AGGRIEVED PARTY, THEN THE AGGRIEVED PARTY MAY PROCEED  
10 AS IF THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE HAD  
11 RENDERED AN ADVERSE DECISION.

12 **SECTION 42.** In Colorado Revised Statutes, **recreate and**  
13 **reenact, with amendments,** 24-109-103 as follows:

14 **24-109-103. Stay of procurements during protests.** A  
15 CONTRACT RESULTING FROM A SOLICITATION IS NOT AWARDED UNTIL ANY  
16 PROTEST MADE IN CONNECTION WITH THE SOLICITATION HAS BEEN  
17 RESOLVED PURSUANT TO SECTION 24-109-102 (2).

18 **SECTION 43.** In Colorado Revised Statutes, 24-109-105, **amend**  
19 (1)(a) and (1)(b) as follows:

20 **24-109-105. Debarment and suspension.** (1) (a) After  
21 reasonable notice to the person involved and reasonable opportunity for  
22 that person to be heard, the ~~head of a purchasing agency~~ PROCUREMENT  
23 OFFICIAL or a HIS OR HER designee, after consultation with the using  
24 agency and the attorney general, shall have authority to debar a person for  
25 any of the reasons set forth in subsection (2) of this section from  
26 consideration for award of contracts. The debarment shall not be for a  
27 period of more than three years; EXCEPT THAT, IF A PERSON IS CONVICTED

1 OF A CRIME SPECIFIED IN SUBSECTION (2) OF THIS SECTION, THE LENGTH OF  
2 THE DEBARMENT PERIOD MUST EQUAL THE LENGTH OF THE CONFINEMENT  
3 SENTENCE INCLUDING THE PERIOD OF MANDATORY PAROLE IF IMPOSED OR  
4 THE LENGTH OF THE PROBATION SENTENCE.

5 (b) ~~The head of a purchasing agency~~ PROCUREMENT OFFICIAL or  
6 ~~a~~ HIS OR HER designee, after consultation with the using agency and the  
7 attorney general, shall have authority to suspend a person from  
8 consideration for award of contracts if there is probable cause to believe  
9 that such person has engaged in activities that may lead to debarment. The  
10 suspension shall not be for a period exceeding three months. However, if  
11 a criminal charge has been issued for an offense that would be a cause for  
12 debarment under subsection (2) of this section, the suspension shall, at the  
13 request of the attorney general, remain in effect until after the trial of the  
14 suspended person. If a person is suspended because a criminal charge has  
15 been issued against an officer, director, partner, manager, key employee,  
16 or other principal of the suspended person, the suspension may remain in  
17 effect until after the trial of the officer, director, partner, manager, key  
18 employee, or other principal or until after the charges against such officer,  
19 director, partner, manager, key employee, or other principal have been  
20 dismissed.

21 **SECTION 44.** In Colorado Revised Statutes, **amend** 24-109-106  
22 as follows:

23 **24-109-106. Resolution of contract and breach of contract**  
24 **controversies - applicability - authority.** (1) This section applies to  
25 controversies between the state and a contractor which arise under, or by  
26 virtue of, a contract between them, including, without limitation,  
27 controversies which are based upon breach of contract, mistake,

1 misrepresentation, or any other cause for contract modification or  
2 rescission.

3 (1.5) WHEN A CONTROVERSY CANNOT BE RESOLVED BY MUTUAL  
4 AGREEMENT, THE AGGRIEVED PARTY MAY SUBMIT THE CONTROVERSY TO  
5 THE PROCUREMENT OFFICIAL. THE PROCUREMENT OFFICIAL OR HIS OR HER  
6 DESIGNEE SHALL, WITHIN TWENTY BUSINESS DAYS AFTER RECEIVING A  
7 WRITTEN REQUEST BY THE AGGRIEVED PARTY FOR A FINAL DECISION, ISSUE  
8 A WRITTEN DECISION.

9 (2) The ~~head of a purchasing agency or a designee~~ PROCUREMENT  
10 OFFICIAL OR HIS OR HER DESIGNEE is authorized to settle and resolve any  
11 controversy described in subsection (1) of this section. This authority  
12 shall be exercised pursuant to rules PROMULGATED BY THE EXECUTIVE  
13 DIRECTOR which shall provide for an expeditious resolution of the  
14 controversy.

15 **SECTION 45.** In Colorado Revised Statutes, **amend** 24-109-107  
16 as follows:

17 **24-109-107. Issuance and appeal of decision.** (1) The ~~head of~~  
18 ~~a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee  
19 shall promptly issue a written decision WITHIN THE PERIODS SPECIFIED IN  
20 THIS ARTICLE 109 regarding any protest, debarment or suspension, or  
21 contract controversy if it is not settled by mutual agreement. The decision  
22 shall state the reasons for the action taken and give notice to the ~~protestor,~~  
23 ~~prospective contractor, or contractor~~ AGGRIEVED PARTY of his or her right  
24 to administrative REVIEW OF ANY MATERIAL ISSUE and judicial ~~reviews~~  
25 REVIEW as provided for in this ~~article~~ ARTICLE 109.

26 (2) A decision shall be effective unless ~~stayed or until~~ reversed on  
27 appeal. A copy of the decision rendered under subsection (1) of this

1 section shall be mailed or otherwise furnished immediately to the  
2 ~~protestor, prospective contractor, or contractor~~ AGGRIEVED PARTY. The  
3 decision shall be final and conclusive unless the ~~protestor, prospective~~  
4 ~~contractor, or contractor~~ AGGRIEVED PARTY appeals the decision to the  
5 executive director or commences an action in court pursuant to this  
6 ~~article. Any~~ ARTICLE 109. EXCEPT FOR APPEALS REFERRED TO THE OFFICE  
7 OF ADMINISTRATIVE COURTS PURSUANT TO SECTION 24-109-201, AN  
8 appeal from a decision under this section shall not be subject to the  
9 provisions of section 24-4-105.

10 (3) If the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or  
11 ~~a~~ HIS OR HER designee does not issue a written decision regarding a  
12 contract controversy within twenty ~~working~~ BUSINESS days after written  
13 request for a final decision, or within such longer period as may be agreed  
14 upon by the ~~parties~~ PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE AND  
15 THE CONTRACTOR, then the contractor may proceed as if a decision  
16 against him or her had been rendered.

17 **SECTION 46.** In Colorado Revised Statutes, **add** 24-109-108 as  
18 follows:

19 **24-109-108. Computation of time.** IN COMPUTING TIME FOR A  
20 PERIOD OF DAYS, THE FIRST BUSINESS DAY IS EXCLUDED AND THE LAST  
21 BUSINESS DAY IS INCLUDED.

22 **SECTION 47.** In Colorado Revised Statutes, **amend** part 2 of  
23 article 109 of title 24 as follows:

24 PART 2  
25 APPEALS

26 **24-109-201. Appeal to the executive director.** Unless an action  
27 has been initiated previously in the district court of the city and county of



1 Denver pursuant to this ~~article~~ ARTICLE 109, the executive director shall  
2 have the authority to review and determine ~~de novo~~ any appeal by an  
3 aggrieved ~~person~~ PARTY from a decision of the ~~head of a purchasing~~  
4 ~~agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee rendered  
5 pursuant to section 24-109-107. The executive director is authorized to  
6 designate another person to exercise his or her powers pursuant to this  
7 part 2. THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE MAY REFER AN  
8 APPEAL TO THE OFFICE OF ADMINISTRATIVE COURTS TO REVIEW AND  
9 DETERMINE ANY APPEAL PURSUANT TO SECTION 24-30-1001. IF THE  
10 AGGRIEVED PARTY FILES AN ACTION WITH THE DISTRICT COURT OF THE  
11 CITY AND COUNTY OF DENVER PURSUANT TO SECTION 24-109-205 AT ANY  
12 TIME DURING THE REVIEW BY THE EXECUTIVE DIRECTOR OR HIS OR HER  
13 DESIGNEE, THE AUTHORITY OF THE EXECUTIVE DIRECTOR OR THE  
14 EXECUTIVE DIRECTOR'S DESIGNEE IS TERMINATED.

15 **24-109-202. Rules of procedure.** (1) The executive director shall  
16 adopt rules of procedure which, to the fullest extent possible, provide for  
17 the expeditious resolution of appeals of controversies. The only parties to  
18 the appeals shall be the ~~persons aggrieved by decisions of the head of a~~  
19 ~~purchasing agency or a designee~~ AGGRIEVED PARTIES and the appropriate  
20 ~~state agency~~ GOVERNMENTAL BODY. Section 24-4-105 shall not apply to  
21 reviews and determinations made by the executive director or his or her  
22 designee pursuant to this ~~article~~ ARTICLE 109.

23 (2) AN APPEAL IS LIMITED TO ONLY THE MATERIAL ISSUES RAISED  
24 IN THE ORIGINAL PROTEST; EXCEPT THAT THE APPEAL MAY INCLUDE NEW  
25 EVIDENCE OR ADDITIONAL INFORMATION RELATED TO THOSE MATERIAL  
26 ISSUES OR MATERIAL ISSUES RELATED TO THE CONDUCT OF THE PROTEST.

27 (3) AN AGGRIEVED PARTY OTHER THAN A GOVERNMENTAL BODY

1 THAT FILES AN APPEAL, EITHER WITH THE EXECUTIVE DIRECTOR OR THE  
2 DISTRICT COURT OF THE CITY AND COUNTY OF DENVER, MAY BE REQUIRED  
3 TO OBTAIN AN APPEAL BOND, EXECUTED BY A CORPORATE SURETY  
4 LICENSED TO TRANSACT SUCH BUSINESS IN THE STATE, IN AN AMOUNT  
5 SPECIFIED IN RULE.

6 (4) IF THE AGGRIEVED PARTY THAT FILES THE APPEAL PREVAILS IN  
7 THE ADMINISTRATIVE PROCEEDING, THE APPEAL BOND SHALL BE  
8 RETURNED TO THAT PARTY. IF THE AGGRIEVED PARTY THAT FILED THE  
9 APPEAL DOES NOT PREVAIL IN THE ADMINISTRATIVE PROCEEDING, THE  
10 APPEAL BOND SHALL BE DEPOSITED INTO THE GENERAL FUND.

11 **24-109-203. Time limitation for appeals.** (1) In the case of an  
12 appeal to the executive director from a decision regarding a protested  
13 solicitation or award, the aggrieved ~~person~~ PARTY shall file an appeal  
14 within ten ~~working~~ BUSINESS days of the date that a decision is mailed OR  
15 OTHERWISE FURNISHED TO THE AGGRIEVED PARTY pursuant to section  
16 24-109-107 (2).

17 (2) In the case of an appeal to the executive director from a  
18 decision regarding a debarment, suspension, or contract controversy, the  
19 aggrieved ~~person~~ PARTY shall file an appeal within twenty ~~working~~  
20 BUSINESS days of ~~receipt of~~ a decision rendered or deemed to be rendered  
21 pursuant to section 24-109-107.

22 **24-109-204. Decisions of the executive director.** (1) On each  
23 appeal submitted, the executive director or ~~the executive director's~~ HIS OR  
24 HER designee shall promptly decide the contract controversy, debarment,  
25 or suspension or whether the solicitation or award was in accordance with  
26 the procedures provided in this code, regulations enacted pursuant to this  
27 code, and the terms and conditions of the solicitation. The decision shall

1 be in writing. A copy of any decision shall be provided to ~~all parties~~ THE  
2 AGGRIEVED PARTY AND THE PROCUREMENT OFFICIAL OF THE USING  
3 AGENCY.

4 (2) ~~A written decision pursuant to subsection (1) of this section~~  
5 ~~shall be issued within the following time periods:~~

6 (a) In the case of any protest concerning the solicitation or award  
7 of a contract or of debarment or suspension from consideration for award  
8 of contract OR CONTRACT CONTROVERSY, A WRITTEN DECISION SHALL BE  
9 ISSUED within thirty ~~working~~ BUSINESS days after receipt of the appeal.  
10 and

11 (b) ~~In the case of any controversy arising between the state and a~~  
12 ~~contractor by virtue of a contract between them, within forty-five days~~  
13 ~~after receipt of the appeal.~~

14 (3) IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE  
15 DETERMINES THAT THE SOLICITATION OR AWARD WAS NOT IN  
16 ACCORDANCE WITH THIS CODE, REMEDIES AWARDED IN THE DECISION, IF  
17 ANY, SHALL BE LIMITED TO THOSE SET FORTH IN PART 5 OF THIS ARTICLE  
18 109.

19 **24-109-205. Appeals to district court.** An appeal of a decision  
20 ~~by~~ OF the executive director or a HIS OR HER designee rendered pursuant  
21 to section 24-109-201 or by the ~~head of a purchasing agency~~  
22 PROCUREMENT OFFICIAL or a HIS OR HER designee rendered pursuant to  
23 section 24-109-107 shall be filed with the district court for the city and  
24 county of Denver, which shall have exclusive jurisdiction to hear such  
25 appeals. ~~Any judicial action under this part 2 shall be de novo, and~~ The  
26 provisions of section 24-4-106 shall not apply TO ANY APPEAL TO THE  
27 DISTRICT COURT UNDER THIS PART 2.

1           **24-109-206. Time limitations on appeals to the district court.**

2           (1) A judicial review of a decision of the executive director or a HIS OR  
3           HER designee or of the ~~head of a purchasing agency~~ PROCUREMENT  
4           OFFICIAL or a HIS OR HER designee shall be initiated within the following  
5           time periods:

6           (a) In the case of an action between the state and a ~~bidder, offeror,~~  
7           ~~or contractor, prospective or actual, who is~~ AN aggrieved PARTY  
8           AGGRIEVED in connection with the solicitation or award of a contract,  
9           within ten ~~working~~ BUSINESS days after ~~receipt of~~ the decision IS  
10          RENDERED;

11          (b) In the case of a suspension or debarment, within six months  
12          after ~~receipt of~~ the decision IS RENDERED; or

13          (c) In the case of an action on a contract or for breach of a  
14          contract, within twenty ~~working~~ BUSINESS days after the date of the  
15          decision IS RENDERED.

16          **SECTION 48.** In Colorado Revised Statutes, **amend** 24-109-301  
17          as follows:

18          **24-109-301. Interest.** Interest on amounts determined to be due  
19          to a contractor or to the state shall be payable from the date the payment  
20          was due in accordance with the terms of the contract or the DATE THE  
21          claim was filed, whichever is earlier, OR through the date of decision or  
22          judgment, whichever is later. Interest shall be calculated at ~~eleven percent~~  
23          ~~per annum~~ THE TREASURER'S INCREMENTAL BORROWING RATE.

24          **SECTION 49.** In Colorado Revised Statutes, **amend** 24-109-404  
25          as follows:

26          **24-109-404. Liability of public employees.** If any governmental  
27          body purchases any supplies, services, or construction contrary to the

1 provisions of this code or the rules promulgated pursuant thereto, the head  
2 of such governmental body and the public employee, which for the  
3 purposes of this section includes elected officials, actually making such  
4 purchase shall be personally liable for the costs thereof OF SUCH SUPPLIES,  
5 SERVICES, OR CONSTRUCTION. If such supplies, services, or construction  
6 are unlawfully purchased and paid for with state moneys, the amount  
7 thereof may be recovered in the name of the state in an appropriate civil  
8 action.

9 **SECTION 50.** In Colorado Revised Statutes, **add** part 5 to article  
10 109 of title 24 as follows:

11 **PART 5**

12 **REMEDIES**

13 **24-109-501. Applicability.** THE REMEDIES SET FORTH IN THIS  
14 PART 5 SHALL BE THE EXCLUSIVE REMEDIES AVAILABLE TO AN AGGRIEVED  
15 PARTY UPON A JUDICIAL OR ADMINISTRATIVE DETERMINATION THAT A  
16 SOLICITATION OR AWARD OF A CONTRACT WAS IN VIOLATION OF THIS  
17 CODE. FOR THE PURPOSES OF THIS PART 5, A VIOLATION OF THE CODE  
18 SHALL NOT INCLUDE ADMINISTRATIVE OR CLERICAL DEFECTS THAT ARE  
19 NOT MATERIAL TO THE SOLICITATION OR AWARD OF A CONTRACT OR THAT  
20 CAN BE CORRECTED BY THE GOVERNMENTAL BODY. CORRECTABLE OR  
21 NONMATERIAL DEFECTS INCLUDE, WITHOUT LIMITATION, MISTAKES IN  
22 MATHEMATICAL CALCULATIONS, FAILURE TO MAINTAIN PROCUREMENT  
23 RECORDS FOLLOWING AN AWARD, FAILURE TO FOLLOW PROCEDURES OR  
24 TERMS AND CONDITIONS SET FORTH IN THE SOLICITATION, OR OTHER  
25 NONMATERIAL OR CORRECTABLE DEFECTS IN A PROCUREMENT. ANY  
26 RELIEF NOT EXPRESSLY PROVIDED FOR IN THIS PART 5, INCLUDING ALL  
27 FORMS OF INJUNCTIVE RELIEF, IS PROHIBITED.

1           **24-109-502. Protests - remedies prior to an award.** IF, PRIOR TO  
2 THE AWARDING OF A CONTRACT, THE PROCUREMENT OFFICIAL  
3 DETERMINES THAT A SOLICITATION OR THE PROPOSED AWARD IS IN  
4 VIOLATION OF THIS CODE, THE SOLICITATION OR PROPOSED AWARD SHALL  
5 BE CANCELED OR REVISED TO COMPLY WITH THIS CODE, AT THE DIRECTION  
6 OF THE PROCUREMENT OFFICIAL. THE DETERMINATION OF THE  
7 PROCUREMENT OFFICIAL UNDER THIS SECTION SHALL NOT BE SUBJECT TO  
8 FURTHER ADMINISTRATIVE OR JUDICIAL REVIEW.

9           **24-109-503. Protest - remedies following an award -**  
10 **ratification by chief procurement officer.** IF THE PROCUREMENT  
11 OFFICIAL DETERMINES THAT THE SOLICITATION OR AWARD IS IN VIOLATION  
12 OF THIS CODE, THE PROCUREMENT OFFICIAL MAY CANCEL OR TERMINATE  
13 SUCH SOLICITATION OR AWARD, DIRECT THE GOVERNMENTAL BODY TO  
14 MODIFY SUCH SOLICITATION OR AWARD TO ELIMINATE THE VIOLATIONS,  
15 OR IF THE PROCUREMENT OFFICIAL DETERMINES THAT THE SOLICITATION  
16 OR AWARD IS IN THE BEST INTERESTS OF THE STATE, THE PROCUREMENT  
17 OFFICIAL MAY SUBMIT THE RECOMMENDATION TO RATIFY THE  
18 SOLICITATION OR AWARD TO THE EXECUTIVE DIRECTOR OR THE CHIEF  
19 PROCUREMENT OFFICER OR A DESIGNEE OF EITHER OFFICER. IF THE  
20 EXECUTIVE DIRECTOR OR CHIEF PROCUREMENT OFFICER OR A DESIGNEE OF  
21 EITHER OFFICER ELECTS TO RATIFY THE SOLICITATION OR AWARD, THE  
22 AGGRIEVED PARTY WHO SHOULD HAVE BEEN AWARDED THE CONTRACT  
23 UNDER THE SOLICITATION, BUT WAS NOT, SHALL BE ENTITLED TO COSTS AS  
24 SET FORTH IN SECTION 24-109-505. THE ACCEPTANCE OF COSTS BY THE  
25 AGGRIEVED PARTY CONSTITUTES A WAIVER OF THE RIGHT TO APPEAL THE  
26 DETERMINATION OF THE EXECUTIVE DIRECTOR OR THE CHIEF  
27 PROCUREMENT OFFICER OR A DESIGNEE OF EITHER OFFICER.

1           **24-109-504. Appeals - remedies following an award.** (1) IF THE  
2 EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE DETERMINES THAT THE  
3 SOLICITATION OR AWARD IS IN VIOLATION OF THIS CODE IN ANY MATERIAL  
4 RESPECT, THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE MAY CANCEL  
5 OR TERMINATE SUCH SOLICITATION OR AWARD, DIRECT THE PURCHASING  
6 AGENCY TO MODIFY SUCH SOLICITATION OR AWARD TO ELIMINATE ANY  
7 VIOLATIONS, OR IF THE PROCUREMENT OFFICIAL DETERMINES THAT THE  
8 SOLICITATION OR AWARD IS IN THE BEST INTERESTS OF THE STATE, THE  
9 PROCUREMENT OFFICIAL MAY SUBMIT THE RECOMMENDATION TO RATIFY  
10 THE SOLICITATION OR AWARD TO THE EXECUTIVE DIRECTOR OR HIS OR HER  
11 DESIGNEE. IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE ELECTS  
12 TO RATIFY THE SOLICITATION OR AWARD, THE AGGRIEVED PARTY WHO  
13 SHOULD HAVE BEEN AWARDED THE CONTRACT UNDER THE SOLICITATION,  
14 BUT WAS NOT, SHALL BE ENTITLED TO COSTS AS SET FORTH IN SECTION  
15 24-109-505.

16           (2) IF, UPON JUDICIAL REVIEW UNDER SECTION 24-109-205, IT IS  
17 DETERMINED THAT A SOLICITATION OR PROPOSED AWARD IS IN VIOLATION  
18 OF THIS CODE, THE COURT SHALL DIRECT THE EXECUTIVE DIRECTOR TO  
19 DETERMINE WHETHER THE BEST INTERESTS OF THE STATE REQUIRE  
20 RATIFICATION, TERMINATION, OR CANCELLATION OF THE SOLICITATION,  
21 AWARD, OR CONTRACT. THE EXECUTIVE DIRECTOR OR HIS OR HER  
22 DESIGNEE SHALL ISSUE ITS DETERMINATION IN WRITING, WITHIN TEN  
23 BUSINESS DAYS OF THE COURT'S DIRECTION, AND DIRECT THE PURCHASING  
24 AGENCY TO COMPLY WITH THE DETERMINATION. THE DETERMINATION OF  
25 THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE UNDER THE DIRECTION  
26 OF THE DISTRICT COURT SHALL NOT BE SUBJECT TO FURTHER  
27 ADMINISTRATIVE OR JUDICIAL APPEAL OR REVIEW.

1 (3) IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE RATIFIES  
2 A SOLICITATION OR AWARD IN VIOLATION OF THIS CODE, THE AGGRIEVED  
3 PARTY WHO SHOULD HAVE BEEN, BUT WAS NOT, AWARDED THE CONTRACT  
4 UNDER THE SOLICITATION SHALL BE ENTITLED TO COSTS AS SET FORTH IN  
5 SECTION 24-109-505.

6 **24-109-505. Costs.** WHEN A PROTEST IS SUSTAINED BY THE  
7 PROCUREMENT OFFICIAL OR UPON ADMINISTRATIVE OR JUDICIAL REVIEW  
8 AND THE AGGRIEVED PARTY SHOULD HAVE BEEN, BUT WAS NOT, AWARDED  
9 THE CONTRACT UNDER THE SOLICITATION, THE AGGRIEVED PARTY SHALL  
10 BE ENTITLED TO ONLY THE REASONABLE COSTS INCURRED IN CONNECTION  
11 WITH THE SOLICITATION, INCLUDING BID PREPARATION COSTS.  
12 REASONABLE COSTS SHALL NOT INCLUDE ATTORNEY FEES. NO OTHER  
13 COSTS SHALL BE PERMITTED. THESE COSTS SHALL BE PAID FROM FUNDS  
14 APPROPRIATED OR OTHERWISE MADE AVAILABLE TO THE USING AGENCY  
15 THAT IS DETERMINED TO BE RESPONSIBLE FOR THE VIOLATION OF THE  
16 CODE. SUCH DETERMINATION SHALL BE MADE BY THE PROCUREMENT  
17 OFFICIAL IN CONNECTION WITH A PROTEST AND BY THE EXECUTIVE  
18 DIRECTOR IN CONNECTION WITH AN APPEAL.

19 **SECTION 51.** In Colorado Revised Statutes, **amend** 24-110-201  
20 as follows:

21 **24-110-201. Cooperative purchasing authorized.** (1) IN  
22 ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE 110 AND RULES  
23 PROMULGATED BY THE EXECUTIVE DIRECTOR, any public procurement unit  
24 may either participate in, sponsor, conduct, or administer a cooperative  
25 purchasing agreement for the procurement of any supplies, services, or  
26 construction with one or more public procurement units, external  
27 procurement ~~activities~~ UNITS, or procurement consortiums that include as



1 members tax-exempt organizations as defined by section 501 (c)(3) of the  
2 federal "Internal Revenue Code of 1986", as amended, in accordance with  
3 an agreement entered into between the participants. Such cooperative  
4 purchasing may include, but is not limited to, joint or multiparty contracts  
5 between public procurement units and open-ended state public  
6 procurement unit contracts that are made available to local public  
7 procurement units.

8 (1.5) WITH PRIOR WRITTEN APPROVAL OF THE CHIEF  
9 PROCUREMENT OFFICER AND UNDER PROCEDURES ESTABLISHED BY RULE,  
10 A STATE PUBLIC PROCUREMENT UNIT MAY SPONSOR, CONDUCT, OR  
11 ADMINISTER A COOPERATIVE PURCHASING AGREEMENT WITH ONE OR MORE  
12 PUBLIC PROCUREMENT UNITS, EXTERNAL PROCUREMENT UNITS, OR  
13 PROCUREMENT CONSORTIUMS.

14 (2) With prior written approval of the ~~executive director~~ CHIEF  
15 PROCUREMENT OFFICER and under procedures established by rule, a state  
16 public procurement unit may purchase goods or services under the terms  
17 of a contract between a vendor and an external procurement ~~activity~~ UNIT  
18 or a local public procurement unit without complying with the  
19 requirements of section 24-102-202.5 and article 103 of this ~~title~~ TITLE  
20 24.

21 (3) WITH WRITTEN APPROVAL FROM THE PROCUREMENT OFFICIAL  
22 AND UNDER PROCEDURES ESTABLISHED BY RULE, A STATE PUBLIC  
23 PROCUREMENT UNIT MAY PURCHASE GOODS OR SERVICES UNDER THE  
24 TERMS OF ANOTHER STATE PUBLIC PROCUREMENT UNIT WITHOUT  
25 COMPLYING WITH THE REQUIREMENTS SPECIFIED IN SECTION 24-102-202.5  
26 AND ARTICLE 103 OF THIS TITLE 24.

27 (4) UNLESS OTHERWISE APPROVED BY THE CHIEF PROCUREMENT

1 OFFICER, THE PROCUREMENT OFFICIAL SHALL COMPLY WITH THE  
2 FOLLOWING ORDER OF PRIORITY FOR THE USE OF COOPERATIVE  
3 PURCHASING AGREEMENTS:

4 (a) FIRST, STATE-ISSUED COOPERATIVE PURCHASING AGREEMENTS;

5 (b) SECOND, STATE PUBLIC PROCUREMENT UNIT COOPERATIVE  
6 PURCHASING AGREEMENTS; AND

7 (c) THIRD, PUBLIC PROCUREMENT UNIT OR EXTERNAL PUBLIC  
8 PROCUREMENT UNIT COOPERATIVE PURCHASING AGREEMENTS.

9 (5) A LOCAL PUBLIC PROCUREMENT UNIT MAY PARTICIPATE IN,  
10 SPONSOR, CONDUCT, OR ADMINISTER A COOPERATIVE PURCHASING  
11 AGREEMENT FOR THE PROCUREMENT OF ANY SUPPLIES OR SERVICES AS  
12 PERMITTED BY THE PROCUREMENT CODE, ORDINANCES, AND RULES OF  
13 SUCH LOCAL PUBLIC PROCUREMENT UNIT.

14 **SECTION 52.** In Colorado Revised Statutes, **amend** 24-110-202  
15 as follows:

16 **24-110-202. Sale, acquisition, or use of supplies by a public**  
17 **procurement unit.** Any public procurement unit may sell to, acquire  
18 from, or use any supplies belonging to another public procurement unit  
19 or external procurement ~~activity~~ UNIT independent of the requirements of  
20 article 103 of this ~~title~~ TITLE 24.

21 **SECTION 53.** In Colorado Revised Statutes, **amend** 24-110-203  
22 as follows:

23 **24-110-203. Cooperative use of supplies or services.** Any public  
24 procurement unit may enter into an agreement, independent of the  
25 requirements of article 103 of this ~~title~~ TITLE 24, with any other public  
26 procurement unit or external procurement ~~activity~~ UNIT for the  
27 cooperative use of supplies or services under the terms agreed upon

1 between the parties.

2 **SECTION 54.** In Colorado Revised Statutes, **amend** 24-110-204  
3 as follows:

4 **24-110-204. Joint use of facilities.** Any public procurement unit  
5 may enter into agreements for the common use or lease of warehousing  
6 facilities, capital equipment, and other facilities with another public  
7 procurement unit or an external procurement ~~activity~~ UNIT under the  
8 terms agreed upon between the parties.

9 **SECTION 55.** In Colorado Revised Statutes, 24-110-205, **amend**  
10 (1), (2), (3) introductory portion, and (4) introductory portion as follows:

11 **24-110-205. Supply of personnel, information, and technical**  
12 **services.** (1) Any public procurement unit is authorized, in its discretion,  
13 upon written request from another public procurement unit or external  
14 procurement ~~activity~~ UNIT, to provide personnel to the requesting public  
15 procurement unit or external procurement ~~activity~~ UNIT.

16 (2) Informational, technical, and other services of any public  
17 procurement unit may be made available to any other public procurement  
18 unit or external procurement ~~activity~~ UNIT if the requirements of the  
19 public procurement unit tendering the services shall have precedence over  
20 the requesting public procurement unit or external procurement ~~activity~~  
21 UNIT. The requesting public procurement unit or external procurement  
22 ~~activity~~ UNIT shall pay any expenses incurred in providing such services,  
23 in accordance with the agreement between the parties.

24 (3) Upon request, the executive director through the division of  
25 local government, within the department of local affairs, may make  
26 available to local public procurement units and external procurement  
27 ~~activities~~ UNITS the following items, including, but not limited to:

1 (4) The state, through the division of local government within the  
2 department of local affairs, may provide to local public procurement units  
3 and external procurement ~~activities~~ UNITS technical services, including,  
4 but not limited to, the following:

5 **SECTION 56.** In Colorado Revised Statutes, **amend** 24-110-206  
6 as follows:

7 **24-110-206. Use of payments received by a supplying public**  
8 **procurement unit.** All payments from any public procurement unit or  
9 external procurement ~~activity which~~ UNIT THAT are received by a public  
10 procurement unit for supplying personnel or services shall be available  
11 for use as authorized by law or pursuant to fiscal rules.

12 **SECTION 57.** In Colorado Revised Statutes, **amend** 24-110-207  
13 as follows:

14 **24-110-207. Public procurement units - compliance with code.**  
15 Whenever the public procurement unit or external procurement ~~activity~~  
16 ~~which~~ UNIT THAT is administering a cooperative ~~purchase~~ PURCHASING  
17 agreement complies with the requirements of this code, the public  
18 procurement unit ~~which~~ THAT is participating in such agreement shall also  
19 be deemed to have complied with this code. No public procurement unit  
20 may enter into a cooperative purchasing agreement for the purpose of  
21 circumventing this code.

22 **SECTION 58.** In Colorado Revised Statutes, 24-110-207.5,  
23 **amend** (2) as follows:

24 **24-110-207.5. Certification of certain entities as local public**  
25 **procurement units - rules - report.** (2) The executive director ~~shall~~  
26 MAY adopt such rules as are necessary to implement the certification  
27 process required by this section.

1           **SECTION 59.** In Colorado Revised Statutes, 8-17-101, **amend**  
2 (2) introductory portion and (2)(b) as follows:

3           **8-17-101. Colorado labor employed on public works.** (2) As  
4 used in this ~~article~~ ARTICLE 17:

5           (b) "Public works project" ~~shall have~~ HAS the same meaning as  
6 "public project" as defined in ~~section 8-19-102(2)~~ SECTION 24-103-908  
7 (1).

8           **SECTION 60.** In Colorado Revised Statutes, 17-24-106.6,  
9 **amend** (2)(a) as follows:

10           **17-24-106.6. Surplus state property.** (2) The director shall  
11 promulgate rules to be utilized by the division in governing:

12           (a) The sale or disposal of surplus state property by public auction,  
13 ~~competitive sealed bidding~~ INVITATION FOR BIDS, or daily warehouse  
14 sales; and

15           **SECTION 61.** In Colorado Revised Statutes, 17-24-111, **amend**  
16 (1)(a) and (6)(a) as follows:

17           **17-24-111. Purchasing requirement.** (1) (a) The director is  
18 hereby authorized to develop programs that produce goods and services,  
19 including capital construction items, which are used by agencies financed  
20 in whole or in part by the state, any political subdivision thereof, or the  
21 federal government and to develop programs that produce goods,  
22 including capital construction items, which are used by public entities  
23 involved in lease-purchase agreements as provided in section 17-24-106  
24 (1)(f)(II). The director shall also develop programs to market goods and  
25 services to distributor networks, nonprofit organizations, private sector  
26 retailers, and the general public. The state and its institutions, agencies,  
27 and departments may purchase through the department of personnel or

1 purchasing agency authorized by section 24-102-302 (2), ~~C.R.S.~~, such  
2 goods and services as are produced by the division, unless similar goods  
3 and services can be obtained at or below the amount established for small  
4 purchases which are exempt from the ~~competitive sealed bidding~~  
5 INVITATION FOR BIDS requirements of the "Procurement Code" contained  
6 in part 2 of article 103 of title 24. ~~C.R.S.~~ Goods and services produced by  
7 the division shall be provided at a price comparable to the current market  
8 price for similar goods and services. State agencies may purchase goods  
9 and services from sources other than the division; except that office  
10 furniture and office systems shall be purchased from the division. Printing  
11 services shall be purchased from the division unless a state agency  
12 operates its own printing operation. If the division is not able to provide  
13 its goods or services at a price or level of quality which is comparable to  
14 that provided by the private sector or provide them in a timely manner,  
15 which price, level of quality, or timeliness is determined by the  
16 department of personnel, the department of personnel shall make a  
17 certification to that effect, and the state agency purchasing such goods or  
18 services shall not be required to purchase them from the division.

19 (6) (a) Notwithstanding any provision of this section to the  
20 contrary, on and after July 1, 2012, a state institution of higher education  
21 or the Auraria higher education center created in article 70 of title 23,  
22 ~~C.R.S.~~, may, but is not required to, purchase goods and services from the  
23 division pursuant to this section. In purchasing furniture and office  
24 systems that exceed the amount established for small purchases that are  
25 exempt from the ~~competitive sealed bidding~~ INVITATION FOR BIDS  
26 requirements of the "Procurement Code" contained in part 2 of article 103  
27 of title 24, ~~C.R.S.~~, a state institution of higher education or the Auraria

1 higher education center shall request a bid from the division for the  
2 purchase, and the institution or the center shall consider the bid on a  
3 competitive basis.

4 **SECTION 62.** In Colorado Revised Statutes, **amend** 23-5-132 as  
5 follows:

6 **23-5-132. Governing boards - travel policies - exemption from**  
7 **state travel rules.** Each governing board shall adopt travel policies for  
8 the institutions of higher education under its control, including but not  
9 limited to the use of travel services or travel agencies by the employees  
10 of the governing board or said institutions. Any rules adopted by the state  
11 controller pursuant to section 24-30-202 (26), ~~C.R.S.~~, or by the executive  
12 director of the department of personnel pursuant to ~~section 24-102-401,~~  
13 ~~C.R.S.~~ SECTION 24-102-202, that impose restrictions or requirements  
14 pertaining to the use of travel services or travel agencies shall not apply  
15 to a governing board or state institution of higher education.

16 **SECTION 63.** In Colorado Revised Statutes, 24-30-202, **amend**  
17 (24)(b) as follows:

18 **24-30-202. Procedures - vouchers, warrants, and checks -**  
19 **rules - penalties - definitions.** (24) (b) As used in ~~paragraph (a) of this~~  
20 ~~subsection (24)~~ SUBSECTION (24)(a) OF THIS SECTION, "liability incurred  
21 on behalf of the state" means the receipt of supplies, as defined in ~~section~~  
22 ~~24-101-301 (22)~~ SECTION 24-101-301 (48), or services, as defined in  
23 ~~section 24-101-301 (20)~~ SECTION 24-101-301 (43), and receipt of a  
24 correct notice of the amount due, by the state agency procuring such  
25 supplies or services from a nongovernmental entity. No liability is  
26 incurred on behalf of the state if a good faith dispute exists as to the  
27 state's obligation to pay all or a portion of the account. Nothing in this

1 subsection (24) shall be construed to affect any provision for the time of  
2 payment in a written contract between a state agency procuring services  
3 or supplies and a nongovernmental entity.

4 **SECTION 64.** In Colorado Revised Statutes, 24-30-1505, **amend**  
5 (2) as follows:

6 **24-30-1505. Powers of the executive director.** (2) The executive  
7 director shall determine the need, if any, for procuring commercial  
8 insurance to protect the state against liability and the specifications for  
9 such insurance. The acquisition of any insurance shall be pursuant to the  
10 state "Procurement Code", articles 101 to 112 of this ~~title~~ TITLE 24. In the  
11 event that no responsible ~~competitive sealed bids~~ RESPONSES TO AN  
12 INVITATION FOR BIDS are received, the executive director may negotiate  
13 with any agent, broker, or insurance company to secure the required  
14 coverage or necessary coverage. Such negotiated policy or policies shall  
15 be subject to the approval of the board.

16 **SECTION 65.** In Colorado Revised Statutes, 24-37-403, **amend**  
17 (3) introductory portion as follows:

18 **24-37-403. Establishment of state pay for success contracts**  
19 **program - pay for success contracts fund - creation.** (3) The office, or  
20 the office and one or more local governments as authorized by subsection  
21 (4) of this section, may enter into a contract with a lead contractor for the  
22 provision of program-eligible interventions. Entry into such a contract is  
23 generally subject to the requirements of the "Procurement Code", articles  
24 101 to 112 of this ~~title~~ TITLE 24, and the office is encouraged, but not  
25 required, to use the ~~competitive sealed~~ REQUEST FOR proposals process  
26 specified in section 24-103-203. When developing and reviewing the  
27 terms of a pay for success contract, the office may consult with the state



1 treasurer on financial terms and with experts to provide advice regarding  
2 definition of appropriate performance targets. A contract shall not require  
3 or authorize the state to use federal moneys to make success payments  
4 unless federal law or federal regulations authorize the use of federal  
5 moneys for that purpose. Before it enters into a contract, the office shall  
6 make the contract available to the public on the office's website and  
7 provide an opportunity for public comment regarding the contract. Prior  
8 to entering into the terms of a contract, a contract must:

9 **SECTION 66.** In Colorado Revised Statutes, 24-91-103.6,  
10 **amend** (2)(b), (2)(c), and (4) as follows:

11 **24-91-103.6. Public entity - contracts - appropriations -**  
12 **contract modifications - severability - definition.** (2) Every public  
13 works contract, as defined in section 24-91-103.5 (1)(b), shall contain the  
14 following:

15 (b) A clause that prohibits the issuance of any ~~change order, as~~  
16 ~~defined in section 24-101-301 (2)~~ CONTRACT MODIFICATION, AS DEFINED  
17 IN SECTION 24-101-301 (11), or other form of ~~order~~ MODIFICATION or  
18 directive by the public entity requiring additional compensable work to  
19 be performed, which work causes the aggregate amount payable under the  
20 contract to exceed the amount appropriated for the original contract,  
21 unless the contractor is given written assurance by the public entity that  
22 lawful appropriations to cover the costs of the additional work have been  
23 made and the appropriations are available prior to performance of the  
24 additional work or unless such work is covered under a remedy-granting  
25 provision in the contract; and

26 (c) For any form of ~~order~~ MODIFICATION or directive by the public  
27 entity requiring additional compensable work to be performed, a clause

1 that requires the public entity to reimburse the contractor for the  
2 contractor's costs on a periodic basis, as those terms are defined in the  
3 contract, for all additional directed work performed until a ~~change order~~  
4 CONTRACT MODIFICATION is finalized. In no instance shall the periodic  
5 reimbursement be required before the contractor has submitted an  
6 estimate of cost to the public entity for the additional compensable work  
7 to be performed. Notwithstanding the provisions of this ~~paragraph (c)~~  
8 SUBSECTION (2)(c), state public works contracts shall be subject to the  
9 provisions of section 24-30-202.

10 (4) In the event that a good faith dispute arises between a public  
11 entity and a contractor concerning the contractor's right to receive  
12 additional compensation under a remedy-granting provision of the public  
13 works contract, it shall not be a defense to a civil action for payment for  
14 such claim that no moneys have been appropriated for such claimed  
15 amounts, so long as the contractor has complied with all provisions of the  
16 contract applicable to the dispute, including but not limited to ~~change~~  
17 ~~order~~ CONTRACT MODIFICATION and additional work clauses, and has  
18 submitted to the public entity a statement sworn to under penalty of  
19 perjury which sets forth: The amount of additional compensation to which  
20 the contractor contends that it is entitled; that claim-supporting data  
21 which is accurate and complete to the best of the contractor's knowledge  
22 and belief have been submitted; and that the amount requested accurately  
23 reflects what is owed by the public entity. As used in this subsection (4),  
24 "remedy-granting provision" means any contract clause which permits  
25 additional compensation in the event that a specific contingency or event  
26 occurs. Such term shall include, but shall not be limited to, change  
27 clauses, differing site conditions clauses, variation in quantities clauses,

1 and termination for convenience clauses.

2 **SECTION 67.** In Colorado Revised Statutes, 24-92-103, **amend**  
3 (1) as follows:

4 **24-92-103. Construction of public projects - invitation for**  
5 **bids.** (1) All construction contracts for public projects that do not receive  
6 federal moneys may be ~~awarded by competitive sealed bidding~~ SOLICITED  
7 BY INVITATION FOR BIDS pursuant to this section.

8 **SECTION 68.** In Colorado Revised Statutes, 24-92-103.5,  
9 **amend** (5) as follows:

10 **24-92-103.5. Construction of public projects - invitation for**  
11 **best value bids.** (5) ~~A request for competitive sealed best value bids~~ AN  
12 INVITATION FOR BEST VALUE BIDS issued pursuant to this section must  
13 otherwise comply with the requirements of section 24-103-203  
14 concerning ~~competitive sealed~~ REQUESTS FOR proposals for  
15 nonconstruction contracts to the extent that such requirements do not  
16 conflict with this section. In the case of a conflict, the provisions of this  
17 section supersede.

18 **SECTION 69.** In Colorado Revised Statutes, **amend** 24-92-103.7  
19 as follows:

20 **24-92-103.7. Disclosure - invitation for bids - invitation for**  
21 **best value bids.** The executive director of an agency of government or  
22 president of an institution of higher education that enters into a  
23 construction contract for a public project pursuant to this ~~article~~ ARTICLE  
24 92 that is not funded in any part with federal moneys shall disclose to the  
25 public the agency of government's rationale or the institution's rationale  
26 for selecting the ~~competitive sealed bidding~~ INVITATION FOR BIDS process  
27 pursuant to section 24-92-103 or the ~~competitive sealed best value~~

1 ~~bidding~~ INVITATION FOR BEST VALUE BIDS process pursuant to section  
2 24-92-103.5 for the public project. The agency or institution shall post the  
3 disclosure on its website.

4 **SECTION 70.** In Colorado Revised Statutes, **amend** 24-92-110  
5 as follows:

6 **24-92-110. Rules and regulations.** The executive director of the  
7 department of personnel shall promulgate rules and regulations which are  
8 designed to implement the provisions of this ~~article~~ ARTICLE 92; except  
9 that the executive director of the department of transportation shall  
10 promulgate rules and regulations relating to bridge and highway  
11 construction bidding practices including, notwithstanding any other  
12 provisions of this ~~article~~ ARTICLE 92, rules governing debarment of  
13 contractors. The rules must include provisions requiring agencies of  
14 government to keep certain public project records, even if duplicative, in  
15 accordance with generally accepted cost accounting principles and  
16 standards. In addition, the rules must include criteria to be used by a  
17 responsible ~~officer~~ PROCUREMENT OFFICIAL in evaluating a ~~competitive~~  
18 ~~sealed~~ RESPONSE TO AN INVITATION FOR best value ~~bid~~ BIDS pursuant to  
19 section 24-92-103.5 (3).

20 **SECTION 71.** In Colorado Revised Statutes, 30-20-1406, **amend**  
21 (2)(f)(III) introductory portion as follows:

22 **30-20-1406. Waste tire market development fund - creation -**  
23 **incentive programs - legislative declaration - repeal.** (2) The  
24 department shall use the fund:

25 (f) (III) For the purpose of expending tire reuse or recycling  
26 incentives under this ~~paragraph (f)~~ SUBSECTION (2)(f)(III), the ~~state~~  
27 ~~purchasing director and any purchasing agent~~ PROCUREMENT OFFICIAL OR

1 HIS OR HER DESIGNEE have the authority to purchase tire-derived products  
2 unless any of the following conditions exist:

3 **SECTION 72.** In Colorado Revised Statutes, 43-1-113, **amend**  
4 (16)(a) as follows:

5 **43-1-113. Funds - budgets - fiscal year - reports and**  
6 **publications - repeal.** (16) (a) If there are fewer than three bidders on a  
7 design bid build highway project, no award shall be made if the award is  
8 more than ten percent over the estimate of the department of  
9 transportation on the project; except that, if the estimate of the department  
10 on the project is less than one million dollars and there are fewer than  
11 three bidders, the executive director may make an award of more than ten  
12 percent, but less than twenty-five percent, over the estimate of the  
13 department to the low responsible bidder, as defined in ~~section~~  
14 ~~24-103-101 (3), C.R.S.~~ SECTION 24-101-301 (24).

15 **SECTION 73.** In Colorado Revised Statutes, 43-1-1202, **amend**  
16 (1)(b) as follows:

17 **43-1-1202. Department powers.** (1) Notwithstanding any other  
18 law, the department may:

19 (b) Solicit proposals for public-private initiatives as ~~competitive~~  
20 ~~sealed~~ REQUESTS FOR proposals pursuant to section 24-103-203; ~~C.R.S.~~;

21 **SECTION 74.** In Colorado Revised Statutes, 43-1-1406, **amend**  
22 (2) as follows:

23 **43-1-1406. General procedures.** (2) Except as provided in this  
24 subsection (2), the department shall allow the preference to Colorado  
25 residents provided in ~~section 8-19-101, C.R.S.~~, SECTION 24-103-908 in  
26 awarding an adjusted score design-build contract pursuant to this part 14.  
27 In evaluating and selecting a proposal for a design-build contract under

1 this part 14, the department shall assign greater value to a proposal in  
2 proportion to the extent such proposal commits to using Colorado  
3 residents to perform work on the transportation project. If, however, the  
4 department determines that compliance with this subsection (2) may  
5 cause the denial of federal moneys that would otherwise be available for  
6 the transportation project or if such compliance would otherwise be  
7 inconsistent with the requirements of federal law, the department shall  
8 suspend the preference granted under this subsection (2) only to the  
9 extent necessary to prevent denial of federal moneys or to eliminate the  
10 inconsistency with federal law.

11 **SECTION 75. Repeal of provisions being relocated in this act.**

12 In Colorado Revised Statutes, **repeal** 8-18-101, 8-18-103, 8-19-101,  
13 8-19-102, 8-19-104, 8-19-105, 8-19.5-101, 24-101-103, 24-102-204,  
14 24-102-205, 24-102-401, 24-103-101, 24-103-202.5, 24-103-207,  
15 24-103-207.5, 24-103-209, 24-103-210, 24-103-211, 24-103-501,  
16 24-103-503, 24-103-601, 24-103.5-101, 24-104-101, 24-107-101,  
17 24-109-101, and 24-110-101 (1) to (5).

18 **SECTION 76.** In Colorado Revised Statutes, **repeal** 24-103-404,  
19 24-103-502, 24-103-807, 24-105-102, 24-109-104, 24-109-401,  
20 24-109-402, 24-109-403, and 24-111-103.

21 **SECTION 77. Act subject to petition - effective date.** This act  
22 takes effect at 12:01 a.m. on the day following the expiration of the  
23 ninety-day period after final adjournment of the general assembly (August  
24 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a  
25 referendum petition is filed pursuant to section 1 (3) of article V of the  
26 state constitution against this act or an item, section, or part of this act  
27 within such period, then the act, item, section, or part will not take effect

1 unless approved by the people at the general election to be held in  
2 November 2018 and, in such case, will take effect on the date of the  
3 official declaration of the vote thereon by the governor.