

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

REREVISED

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

LLS NO. 17-0673.01 Nicole Myers x4326

HOUSE BILL 17-1051

HOUSE SPONSORSHIP

Rankin and Garnett,

SENATE SPONSORSHIP

Coram and Kerr,

House Committees
Business Affairs and Labor

Senate Committees
Business, Labor, & Technology

A BILL FOR AN ACT

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

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.

SENATE
3rd Reading Unamended
March 21, 2017

SENATE
2nd Reading Unamended
March 20, 2017

HOUSE
3rd Reading Unamended
March 6, 2017

HOUSE
Amended 2nd Reading
March 3, 2017

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.

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

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

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

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

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

SECTION 3. In Colorado Revised Statutes, **amend** 24-101-105 as follows:

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

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

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

11 (II.5) GRANTS;

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

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

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

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

23 (VII) Repealed.

24 (VIII) UTILITIES, INCLUDING WATER, ELECTRICITY, AND NATURAL
25 GAS;

26 (IX) WORKS OF ART FOR DISPLAY, PURCHASE, OR PERFORMANCE;

27 (X) COPYRIGHTED MATERIALS SUCH AS BOOKS, PERIODICALS,

1 COLLECTIONS, AND SUBSCRIPTIONS;

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

5 (XII) CLIENT-BASED SERVICES INCLUDING MEDICAL SERVICES OR
6 SERVICES WHERE THE CLIENT HAS THE RIGHT TO CHOOSE THE VENDOR;

7 (XIII) DUES AND MEMBERSHIPS;

8 (XIV) ANNUITIES; AND

9 (XV) REAL PROPERTY OR INTEREST IN REAL PROPERTY.

10

11 (a.5) IF THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE
12 DETERMINES THAT REASONABLE COMPETITION EXISTS IN THE
13 PROCUREMENT OF A GOOD OR SERVICE THAT IS EXEMPT FROM THE CODE
14 PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE PROCUREMENT
15 OFFICIAL OR HIS OR HER DESIGNEE MAY REQUIRE A COMPETITIVE PROCESS.

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

22 (c) Repealed.

23 (d) Except as provided in section 24-111-103, this code shall also
24 apply to contracts funded in whole or in part with federal assistance
25 moneys. This code shall apply to the transfer or disposal of state supplies.

26 (e) Upon the request of a governmental body purchasing TO
27 PURCHASE items for resale to the public, the head of a purchasing agency

1 PROCUREMENT OFFICIAL may, by written determination, provide that this
2 code shall not apply to items acquired for such resale.

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

7 (g) UPON THE REQUEST TO ENTER INTO A REVENUE-PRODUCING
8 CONTRACT, THE PROCUREMENT OFFICIAL MAY, BY WRITTEN
9 DETERMINATION, PROVIDE THAT THIS CODE SHALL NOT APPLY TO THE
10 REVENUE-PRODUCING CONTRACT. GOVERNMENTAL BODIES SHALL
11 MAXIMIZE THE RETURN TO THE STATE WHEN THEY ARE PARTIES TO
12 REVENUE-PRODUCING CONTRACTS.

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

16 (3) ~~The provisions of sections 8-18-101 and 8-18-103, C.R.S.,~~
17 ~~which require a preference for resident bidders and resident agricultural~~
18 ~~products under certain circumstances, apply to the award of contracts~~
19 ~~under this code.~~

20 (4) ~~The executive director of the department of human services~~
21 ~~may procure the necessary services and support required to develop,~~
22 ~~implement, and operate state and federal child support enforcement~~
23 ~~welfare reform mandates which shall not be subject to this code. This~~
24 ~~procurement shall be limited to funds specifically appropriated for child~~
25 ~~support enforcement in fiscal year 1997-98 subject to available~~
26 ~~appropriations for information technology hardware, software, and related~~
27 ~~services.~~

1 **SECTION 4.** In Colorado Revised Statutes, **add** 24-101-106 and
2 24-101-107 as follows:

3 **24-101-106. Procurement training.** THE CHIEF PROCUREMENT
4 OFFICER, OR HIS OR HER DESIGNEE, MAY DEVELOP AND CONDUCT A
5 PROCUREMENT EDUCATION AND TRAINING PROGRAM FOR EMPLOYEES OF
6 GOVERNMENTAL BODIES AND FOR VENDORS.

7 **24-101-107. Procurement ethics.** ANY PERSON WHO IS EMPLOYED
8 BY A GOVERNMENTAL BODY WHO PURCHASES GOODS OR SERVICES OR IS
9 INVOLVED IN THE PURCHASING PROCESS FOR THE STATE, ANY END USERS
10 OF SUCH GOODS AND SERVICES, ANY VENDOR OR CONTRACTOR THAT DOES
11 BUSINESS WITH THE STATE, AND ANY OTHER INTERESTED THIRD PARTIES
12 TO THE PROCUREMENT PROCESS SHALL ENHANCE THE PROFICIENCY AND
13 STATURE OF THE PURCHASING PROCESS BY ADHERING TO THE HIGHEST
14 STANDARDS OF ETHICAL BEHAVIOR.

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

17 **24-101-201. Determinations.** Written determinations required by
18 this code shall be retained in the appropriate official ~~contract~~
19 PROCUREMENT file of the department of personnel or the purchasing
20 agency administering the procurement.

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

23 **24-101-301. Definitions.** The terms defined in this section shall
24 have the following meanings whenever they appear in this code, unless
25 the context in which they are used clearly requires a different meaning or
26 a different definition is prescribed for a particular article or portion
27 thereof:

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

3
4 ~~(1)~~ (2) "Award" means the ~~acceptance of a bid or proposal and~~
5 ~~may include the presentation of a proposed written agreement for~~
6 ~~performance of the contract~~ SELECTION OF A BID OR PROPOSAL BY A
7 GOVERNMENTAL BODY. AN AWARD DOES NOT MEAN THAT A CONTRACT
8 HAS BEEN EXECUTED OR THAT A COMMITMENT VOUCHER HAS BEEN ISSUED
9 PURSUANT TO SECTION 24-30-202.

10 (3) "BIDDER" MEANS ANY PERSON THAT SUBMITS A BID IN
11 RESPONSE TO AN INVITATION FOR BIDS.

12 ~~(1.5)~~ (4) "Business" means any corporation, limited liability
13 company, partnership, individual, sole proprietorship, joint-stock
14 company, joint venture, or other private legal entity.

15 (5) "BUSINESS DAY" MEANS ANY DAY OTHER THAN SATURDAY,
16 SUNDAY, OR A LEGAL HOLIDAY.

17 ~~(2)~~ "Change order" means a written order, signed by a
18 procurement officer, directing the contractor to make changes which the
19 changes clause of the contract authorizes the procurement officer to order
20 without the consent of the contractor.

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

25 ~~(3)~~ (7) "Construction" means the process of building, altering,
26 repairing, improving, or demolishing any public structure or building or
27 any other public improvements of any kind to any public real property.

1 For the purposes of this code, "construction" includes capital construction
2 and controlled maintenance, as defined in section 24-30-1301.

3 (8) "CONTINGENCY-BASED CONTRACT" SHALL HAVE THE SAME
4 MEANING AS SET FORTH IN SECTION 24-17-203 (1).

5 (4) (9) "Contract" means any type of state agreement, regardless
6 of what it may be called, ~~for the procurement or disposal of supplies,~~
7 ~~services, or construction~~ BETWEEN A GOVERNMENTAL BODY AND A
8 CONTRACTOR, WHERE THE PRINCIPAL PURPOSE IS TO ACQUIRE SUPPLIES,
9 SERVICES, OR CONSTRUCTION OR TO DISPOSE OF SUPPLIES FOR THE DIRECT
10 BENEFIT OF A GOVERNMENTAL BODY. "CONTRACT" INCLUDES
11 COMMITMENT VOUCHERS AS DESCRIBED IN SECTION 24-30-202.

12 (5) (10) "Contract modification" means any written alteration of
13 ~~specifications, delivery point, rate of delivery, period of performance,~~
14 ~~price, quantity, or other provision of a contract accomplished by mutual~~
15 ~~action of the parties to the~~ IN ACCORDANCE WITH THE TERMS OF THAT
16 contract.

17 (6) (11) "Contractor" means any person having a contract with a
18 governmental body. FOR THE PURPOSES OF THIS CODE, A VENDOR IS
19 CONSIDERED A CONTRACTOR.

20 (12) [Formerly 24-110-101 (1)] "Cooperative purchasing" means
21 procurement conducted by, or on behalf of, more than one public
22 procurement unit or by a public procurement unit with an external
23 procurement activity UNIT.

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

1 ~~(7)~~ Repealed.

2 ~~(8)~~ (14) "Department" means the department of personnel.

3 (15) [Formerly 24-103-101 (2)] "Established ~~catalogue~~ CATALOG
4 price" means the price included in a ~~catalogue~~ CATALOG, price list,
5 schedule, or other form that:

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

7 (b) Is either published or otherwise available for inspection by
8 customers; and

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

12 ~~(9)~~ (16) "Executive director" means the executive director of the
13 department of personnel.

14 (17) [Formerly 24-110-101 (2)] "External procurement ~~activity~~
15 UNIT" means any buying organization not located in this state which, if
16 located in this state, would qualify as a public procurement unit. AN
17 EXTERNAL PROCUREMENT UNIT INCLUDES ANY PURCHASING COOPERATIVE
18 THAT SATISFIES THE PURPOSES OF THIS CODE AS SET FORTH IN SECTION
19 24-101-102. An agency of the United States is an external procurement
20 ~~activity~~ UNIT.

21 ~~(10)~~ (18) "Governmental body" means any department,
22 commission, council, board, bureau, committee, institution of higher
23 education, agency, government corporation, or other establishment or
24 official, other than an elected official, of the executive branch of state
25 government in this state; except that

26 ~~(a)~~ the governing board of each institution of higher education,
27 including the Auraria higher education center established in article 70 of

1 title 23, C.R.S., by formal action of the board, and the Colorado
2 commission on higher education, by formal action of the commission,
3 may elect to be excluded from the meaning of "governmental body".

4 (b) ~~(Deleted by amendment, L. 2010, (SB 10-111), ch. 170, p.~~
5 ~~603, § 12, effective August 11, 2010.)~~

6 ~~(10.5) (a) (19) "Grant" means the furnishing of assistance,~~
7 ~~including financial or other means of assistance, by the purchasing agency~~
8 ~~to any person to support a program authorized by law~~ AN AGREEMENT IN
9 WHICH A GOVERNMENTAL BODY AS GRANTOR TRANSFERS ANYTHING OF
10 VALUE TO A GRANTEE TO CARRY OUT A PUBLIC PURPOSE OF SUPPORT OR
11 STIMULATION AUTHORIZED BY LAW INSTEAD OF ACQUIRING PROPERTY OR
12 SERVICES FOR THE DIRECT BENEFIT OR USE OF THAT GOVERNMENTAL
13 BODY. A GRANT MAY INCLUDE A DISTRIBUTION OF FUNDS.

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

15 ~~(I) A loan;~~

16 ~~(II) An award required by the terms of a grant to be awarded in~~
17 ~~accordance with the purchasing agency's procurement statutes and~~
18 ~~regulations; or~~

19 ~~(III) An award whose primary purpose is to procure an end~~
20 ~~product to satisfy a requirement of the purchasing agency, either in the~~
21 ~~form of supplies, services, or construction.~~

22 ~~(11) "Head of a purchasing agency" means the director of a~~
23 ~~purchasing agency created pursuant to section 24-102-204 or 24-102-302~~
24 ~~(2) and the principal representative authorized to enter into contracts for~~
25 ~~capital construction or controlled maintenance pursuant to part 13 of~~
26 ~~article 30 of this title.~~

27 ~~(12) (20) "Invitation for bids" means all documents, whether~~

1 attached or incorporated by reference, utilized for soliciting bids.
2 INVITATION FOR BIDS IS THE COMMONLY USED TERM FOR SOLICITING
3 COMPETITIVE SEALED BIDS AND COMPETITIVE SEALED BEST VALUE BIDS.

4 (21) "LEGAL HOLIDAY" SHALL HAVE THE SAME MEANING AS
5 DEFINED IN SECTION 24-11-101 (1).

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

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

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

22 (25) "NONRESIDENT BIDDER" MEANS A BIDDER THAT DOES NOT
23 SATISFY THE CRITERIA TO BE A RESIDENT BIDDER.

24 (26) "OFFEROR" MEANS ANY PERSON THAT SUBMITS A PROPOSAL
25 IN RESPONSE TO A REQUEST FOR PROPOSALS.

26 (13) (27) "Person" means any business, individual, union,
27 committee, club, other organization, JOINT VENTURE, or group of

1 individuals.

2 (14) (28) "Procurement" means buying, purchasing, renting,
3 leasing, or otherwise acquiring any supplies, services, or construction.
4 "Procurement" includes all functions that pertain to the obtaining of any
5 supply, service, or construction, including description of requirements,
6 selection and solicitation of sources, preparation and award of contract,
7 and all phases of contract administration. "PROCUREMENT" ALSO
8 INCLUDES THE PROCUREMENT OF INFORMATION TECHNOLOGY AS DEFINED
9 IN SECTION 24-37.5-102 (2).

10 (15) (29) "Procurement officer AGENT" means any person duly
11 authorized to enter into and administer ~~contracts~~ PROCUREMENTS and
12 make written determinations with respect thereto. "Procurement officer
13 AGENT" includes an authorized representative acting within the limits of
14 his OR HER authority.

15 (30) "PROCUREMENT OFFICIAL" MEANS THE ■ INDIVIDUAL OF A
16 PURCHASING AGENCY WITH PURCHASING AUTHORITY CREATED PURSUANT
17 TO SECTION 24-102-204 OR 24-102-302 (2) OR THE INDIVIDUAL
18 AUTHORIZED TO ENTER INTO CONTRACTS FOR CAPITAL CONSTRUCTION OR
19 CONTROLLED MAINTENANCE PURSUANT TO ■ SECTION 24-30-1303 (5).

20 (31) [Formerly 24-103-101 (4)] "Professional services" means
21 services of accountants, clergy, physicians, lawyers, and dentists and such
22 other services as may be procured through agents of those services,
23 excluding those professional services as defined in section 24-30-1402,
24 as the executive director may by rule designate as professional services.

25 (16) (32) "Public employee" means an individual drawing a salary
26 from a governmental body or a noncompensated individual performing
27 personal services for a governmental body.

1 (33) [Formerly 24-110-101 (4)] "Public procurement unit"
2 means either a local public procurement unit or a state public procurement
3 unit.

4 (34) [Formerly 24-103-101 (5)] "Purchase description" means
5 the words used in a solicitation to describe the supplies, services, or
6 construction to be purchased, and includes specifications attached to, or
7 made a part of, the solicitation.

8 (17) (35) "Purchasing agency" means any governmental body
9 ~~other than the department of personnel~~ which is authorized to enter into
10 contracts by section 24-102-302 (1) by way of delegation from the
11 executive director pursuant to section 24-102-302 (2) or by the way of
12 delegation from the executive director. ~~pursuant to section 24-102-204.~~

13 (18) (36) "Request for proposals" means all documents, whether
14 attached or incorporated by reference, utilized for soliciting proposals.
15 REQUEST FOR PROPOSALS IS THE COMMONLY USED TERM FOR SOLICITING
16 COMPETITIVE SEALED PROPOSALS.

17 (37) [Formerly 24-103-101 (6)] "Resident bidder" means:

18 (a) A person ~~or business~~ that is authorized to transact business in
19 Colorado and that maintains its principal place of business in Colorado;
20 or

21 (b) A person ~~or business~~ that:

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

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

24 (III) Has ~~filed Colorado unemployment compensation reports in~~
25 ~~at least seventy-five percent of the eight quarters immediately before~~
26 ~~bidding on a contract~~ PAID COLORADO UNEMPLOYMENT COMPENSATION
27 TAXES IN AT LEAST SIX OF THE EIGHT QUARTERS IMMEDIATELY PRIOR TO

1 BIDDING ON A CONSTRUCTION CONTRACT FOR A PUBLIC PROJECT.

2 (38) "RESPONSIBLE" MEANS THE CAPABILITY IN ALL RESPECTS TO
3 PERFORM FULLY THE CONTRACT REQUIREMENTS AND THE INTEGRITY AND
4 RELIABILITY THAT WILL ASSURE GOOD FAITH PERFORMANCE.

5 (39) "RESPONSIVE" MEANS A BID OR PROPOSAL THAT MEETS THE
6 SPECIFICATIONS, ACCEPTABILITY REQUIREMENTS, AND TERMS AND
7 CONDITIONS OF THE SOLICITATION AND THAT USES THE FORM PRESCRIBED
8 BY THE PURCHASING AGENCY.

9 ~~(19)~~ (40) "Rules" means state procurement rules and has the same
10 meaning as provided in section 24-4-102 (15).

11 (41) "SEALED" MEANS A BID OR PROPOSAL SUBMITTED IN A
12 MANNER THAT:

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

17 (b) ENSURES THAT THE DOCUMENT CANNOT BE CHANGED, ONCE
18 RECEIVED BY THE STATE, WITHOUT LEAVING EVIDENCE THAT THE
19 DOCUMENT HAS BEEN CHANGED;

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

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

27 ~~(20)~~ (42) "Services" means the furnishing of labor, time, or effort

1 by a contractor not involving the delivery of a specific end product other
2 than reports which are merely incidental to the required performance. The
3 term does not include professional services as defined in section
4 24-30-1402.

5 ~~(21) (Deleted by amendment, L. 96, p. 1533, § 98, effective June~~
6 ~~1, 1996.)~~

7 (43) "SOLICITATION" MEANS ALL DOCUMENTS AND RELATED
8 INFORMATION, WHETHER ATTACHED OR INCORPORATED BY REFERENCE,
9 PUBLISHED ON AN ELECTRONIC BIDDING SYSTEM IN CONNECTION WITH A
10 PROCUREMENT PRIOR TO THE RESPONSE DEADLINE.

11 (44) [Formerly 24-104-101 (1)] "Specification" means any
12 description of the physical or functional characteristics or of the nature of
13 a supply, service, or construction item. It may include a description of any
14 requirement for inspecting, testing, or preparing a supply, service, or
15 construction item for delivery.

16 (45) [Formerly 24-110-101 (5)] "State public procurement unit"
17 means the department of personnel or any other purchasing agency of this
18 state.

19 (46) "STATEMENT OF WORK" MEANS A DOCUMENT THAT DEFINES
20 SPECIFIC ACTIVITIES AND DELIVERABLES AND THEIR RESPECTIVE
21 TIMELINES, ALL OF WHICH FORM A CONTRACTUAL OBLIGATION UPON THE
22 VENDOR IN PROVIDING SERVICES TO THE STATE.

23 ~~(22)~~ (47) "Supplies" means all property, including but not
24 limited to equipment, materials, and insurance. The term does not include
25 land, the purchase of an interest in land, water or mineral rights, workers'
26 compensation insurance, benefit insurance for state employees, or
27 property furnished in connection with public printing, as defined in

1 section 24-70-201.

2 (23) (48) "Using agency" means any governmental body of the
3 state which utilizes any supplies, services, or construction procured under
4 this code.

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

7 **24-101-401. Public access to procurement information -**
8 **repeal.** (1) Except as provided in ~~section 24-103-203 (4), procurement~~
9 ~~information is a public record and is available to the public~~ SECTION
10 24-103-201.5, PROPOSALS AND BIDS SHALL BE OPENED SO AS TO AVOID
11 DISCLOSURE OF THE CONTENTS OF THE PROPOSAL OR BID TO COMPETING
12 OFFERORS DURING THE REVIEW PROCESS. A REGISTER OF PROPOSALS AND
13 BIDS SHALL BE PREPARED IN ACCORDANCE WITH RULES AND SUCH
14 PROCUREMENT RECORDS SHALL BE OPEN FOR PUBLIC INSPECTION AFTER
15 THE AWARD as provided in sections 24-72-203 and 24-72-204. THE
16 EXECUTIVE DIRECTOR MAY PROMULGATE RULES TO CLARIFY THE PROCESS
17 FOR CLASSIFYING CONFIDENTIAL OR PROPRIETARY INFORMATION IN
18 PROCUREMENT RECORDS.

19 **SECTION 8.** In Colorado Revised Statutes, **amend** 24-102-101
20 as follows:

21 **24-102-101. Authority and duties of the executive director.**
22 Subject to the provisions of ~~part 4~~ PART 2 of this ~~article~~ ARTICLE 102, the
23 executive director of the department of personnel has the authority and
24 responsibility to promulgate rules, consistent with this code, governing
25 the procurement and disposal of any and all supplies, services, and
26 construction to be procured by the state, except for surplus state property
27 as provided in section 17-24-106.6, C.R.S., and except as provided in part

1 4 of article 82 of this ~~title~~ TITLE 24. The executive director shall consider
2 and decide matters of policy within the provisions of this code.

3 **SECTION 9.** In Colorado Revised Statutes, **amend with**
4 **relocated provisions** 24-102-202 as follows:

5 **24-102-202. Authority of the executive director and chief**
6 **procurement officer - delegation of authority - rules.** (1) Consistent
7 with the provisions of this code, the executive director may adopt
8 operational procedures governing the internal functions of the
9 department.

10 (2) (a) ~~[Formerly 24-102-401 (1)] Rules shall be promulgated in~~
11 ~~accordance with the applicable provisions of section 24-4-103~~ THE
12 EXECUTIVE DIRECTOR MAY PROMULGATE RULES IN ACCORDANCE WITH
13 THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF THIS TITLE
14 24, IN FURTHERANCE OF THE ADMINISTRATION OF THIS CODE.

15 (b) ~~[Formerly 24-102-401 (2)]~~ The executive director may
16 delegate his ~~power~~ OR HER AUTHORITY to promulgate rules.

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

21 (3) ~~[Formerly 24-102-204]~~ Subject to rules, the executive director
22 may delegate HIS OR HER purchasing authority to designees or to any
23 department, agency, or official.

24 ~~(2)~~ (4) Except as otherwise specifically provided in this code, the
25 ~~executive director~~ CHIEF PROCUREMENT OFFICER shall, pursuant to rules:

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

- 1 (b) Repealed.
- 2 (c) Establish and maintain programs for the inspection, testing,
3 and acceptance of supplies and services;
- 4 (d) RETAIN THE RIGHT TO examine each requisition submitted by
5 a using agency and approve, disapprove, or revise it as to quantity or
6 quality;
- 7 (e) Develop and maintain programs and procedures to delegate
8 purchasing authority in order to conserve resources for management of
9 the statewide purchasing system; and
- 10 (f) Develop programs to evaluate and reduce the administrative
11 costs of the statewide procurement function.

12 **SECTION 10.** In Colorado Revised Statutes, 24-102-202.5,
13 **amend** (1), (2)(a), and (2.5) as follows:

14 **24-102-202.5. Supplier database - fees - cash fund - program**
15 **account.** (1) The executive director shall develop a centralized database
16 that includes a listing of all businesses which are interested in providing
17 goods and services to the state. The businesses in the database shall be
18 identified by a registration number, and the executive director shall
19 develop a procedure for notifying the appropriate businesses whenever
20 the state issues ~~requests for proposals or invitations for bids~~
21 SOLICITATIONS for goods or services which a particular business provides.
22 The database shall be accessible through the department of personnel to
23 all purchasing agencies designated pursuant to section 24-102-302 (2).

24 (2) (a) THE EXECUTIVE DIRECTOR MAY REQUIRE each business that
25 wishes to be included in the database created pursuant to subsection (1)
26 of this section ~~shall~~ TO pay a registration fee as determined by the
27 executive director. The executive director ~~shall~~ MAY set and collect such

1 fees as are necessary to cover the direct and indirect costs that are
2 incurred in implementing the provisions of this section. The revenue from
3 such fees shall be transmitted to the state treasurer, who shall credit the
4 same to the supplier database cash fund, which fund is hereby created.
5 The general assembly shall make appropriations from such fund as
6 necessary to implement the provisions of this section. All money not
7 expended or encumbered and all interest earned on the investment or
8 deposit of the money in the fund shall remain in the fund and shall not
9 revert to the general fund or any other fund at the end of any fiscal year.

10 (2.5) (a) The executive director shall develop and implement a
11 statewide centralized electronic procurement system to allow the
12 utilization of technology to create a more efficient delivery of state
13 procurement services. The executive director ~~shall~~ MAY set and collect
14 fees from vendors with cooperative purchasing agreements and from local
15 public procurement units ~~as defined in section 24-110-101 (3), and that~~
16 ~~are participating in the electronic procurement system, as necessary to~~
17 ~~cover the direct and indirect costs of implementing and maintaining the~~
18 ~~electronic procurement system. In addition, the executive director may~~
19 ~~collect moneys from cooperative purchasing organizations for~~
20 ~~procurement support.~~

21 (b) ~~Prior to July 1, 2013, the revenue from the fees and any~~
22 ~~moneys received from cooperative purchasing organizations pursuant to~~
23 ~~paragraph (a) of this subsection (2.5) shall be transmitted to the state~~
24 ~~treasurer, who shall credit the same to the electronic procurement~~
25 ~~program account, which is hereby created within the supplier database~~
26 ~~cash fund created in paragraph (a) of subsection (2) of this section. The~~
27 ~~moneys in the account shall be annually appropriated by the general~~

1 assembly for the purposes of implementing and maintaining the electronic
2 procurement system. All moneys not expended or encumbered and all
3 interest earned on the investment or deposit of the moneys in the account
4 shall remain in the account and shall not revert to the general fund or any
5 other fund at the end of any fiscal year; except that any unexpended
6 moneys remaining in the account on June 30, 2013, shall be transferred
7 to the supplier database cash fund.

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

14 **SECTION 11.** In Colorado Revised Statutes, **amend** 24-102-207
15 as follows:

16 **24-102-207. Statewide procurement card agreement.** (1) The
17 department shall establish a statewide procurement card program. All
18 governmental bodies that utilize a procurement card shall participate in
19 the statewide program. For purposes of this section, "governmental body"
20 ~~shall have~~ HAS the same meaning as set forth in ~~section 24-101-301 (10)~~
21 SECTION 24-101-301 (18); except that, for purposes of this section,
22 "governmental body" ~~shall also include~~ INCLUDES elected officials.

23 (2) Governmental bodies that are not subject to the "Procurement
24 Code", articles 101 to 112 of this ~~title~~ TITLE 24, or the fiscal rules are
25 subject to this section; except that, on and after December 1, 2010, this
26 section ~~shall~~ DOES not apply to an institution of higher education that has
27 elected to be excluded from the meaning of "governmental body"

1 pursuant to ~~section 24-101-301 (10) (a)~~ SECTION 24-101-301 (18).

2 (3) The statewide procurement card shall be considered an
3 alternate method of payment and shall not be considered a commitment
4 voucher required by section 24-30-202 (1). Any revenues resulting from
5 the procurement card program shall be deposited as cash revenue in the
6 general fund and shall be subject to annual appropriation by the general
7 assembly. Unless otherwise directed by the general assembly, the state
8 controller shall make adjustments equivalent to such revenues in the form
9 of a reduction of administrative costs allocated to governmental bodies on
10 a basis proportional to each governmental body's contribution to statewide
11 procurement card expenditures, as determined by the state controller, to
12 ensure that the federal government receives its share of procurement card
13 revenues as required by federal regulations and to ensure that the indirect
14 obligations are funded. Institutions of higher education that elect to be
15 excluded from the meaning of "governmental body" pursuant to ~~section~~
16 ~~24-101-301 (10) (a)~~ SECTION 24-101-301 (18) shall transfer money to the
17 department of higher education or the Colorado commission on higher
18 education to the extent required to pay indirect cost assessments, as
19 defined in section 24-75-112 (1)(f). For purposes of this subsection (3)
20 the term "allocated" does not mean an appropriation or cash transfer to
21 any governmental body, but refers to an internal process within the office
22 of the state controller.

23 **SECTION 12.** In Colorado Revised Statutes, **amend 24-102-302**
24 **as follows:**

25 **24-102-302. Purchasing agencies - establishment - authority.**

26 (1) Capital construction and controlled maintenance, as defined and
27 delegated to ~~principal representatives~~ A PROCUREMENT OFFICIAL by part

1 13 of article 30 of this ~~title~~ TITLE 24, shall be procured by such ~~principal~~
2 ~~representatives~~ PROCUREMENT OFFICIAL as the appropriate purchasing
3 agency.

4 (2) If the executive director OR HIS OR HER DESIGNEE is of the
5 opinion and so certifies in writing that the needs of any governmental
6 body are of such specialized nature and sufficient volume to warrant a
7 purchasing agency for such governmental body, he OR SHE shall authorize
8 the creation of the same. All such purchasing agencies shall operate under
9 the provisions of this code and the rules promulgated pursuant thereto and
10 shall be subject to the supervision and control of the executive director.
11 All such purchasing agencies shall operate under the provisions of section
12 17-24-111 ~~C.R.S.~~, requiring the purchase of goods and services from the
13 division of correctional industries, and failure of any such purchasing
14 agency to comply with such requirement shall be cause for the executive
15 director to suspend for a period of up to one year at the discretion of the
16 executive director the authority of a purchasing agency created pursuant
17 to this subsection (2) to purchase goods and services. The authority of a
18 purchasing agency to purchase goods and services may also be suspended
19 at the discretion of the executive director. The financial and staff
20 resources dedicated to the purchasing function in the affected agency
21 shall be under the authority of the department of personnel during the
22 period of suspension, and purchases made for the affected agency shall
23 be in accordance with the requirements of section 17-24-111 (1). ~~C.R.S.~~

24 (3) The ~~heads of purchasing agencies~~ PROCUREMENT OFFICIALS
25 responsible for procuring the supplies, services, or construction delegated
26 to them by subsections (1) and (2) of this section shall conduct
27 procurements in accordance with the provisions of this code and its

1 implementing rules. The executive director ~~shall~~ MAY establish a standard
2 supplier's form and a standard set of procedures that each purchasing
3 agency shall use in accepting the form and evaluating the supplier. ~~Each~~
4 ~~purchasing agency created pursuant to this section shall submit a quarterly~~
5 ~~report to the executive director regarding the quantity and type of goods~~
6 ~~and services procured during the prior quarter. Such report shall include~~
7 ~~a description of any instance where a contractor failed to deliver a good~~
8 ~~or service in accordance with the provisions of the contract. The reporting~~
9 ~~requirements established in this subsection (3) shall be in addition to and~~
10 ~~not in lieu of any other reporting requirements established in this code.~~

11 **SECTION 13.** In Colorado Revised Statutes, **amend 24-102-501**
12 as follows:

13 **24-102-501. Collection of data concerning public procurement.**

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

19 **SECTION 14.** In Colorado Revised Statutes, **amend 24-103-201**
20 as follows:

21 **24-103-201. Methods of source selection.** (1) Unless otherwise
22 authorized by law, all state contracts shall be awarded ~~by competitive~~
23 ~~sealed bidding pursuant to section 24-103-202, except as provided in:~~

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

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

- 1 ~~(a.5)~~(c) Section 24-103-202.3, concerning ~~competitive sealed best~~
2 ~~value bidding~~ AWARDS SOLICITED BY AN INVITATION FOR BEST VALUE
3 BIDS;
- 4 ~~(b)~~(d) Section 24-103-204, concerning small purchases;
- 5 ~~(c)~~(e) Section 24-103-205, concerning sole source procurements;
- 6 ~~(d)~~(f) Section 24-103-206, concerning emergency procurements;
- 7 ~~(e)~~(g) Part 14 of article 30 of this ~~title~~ TITLE 24, concerning
8 architect, engineer, landscape architect, and land surveying services;
- 9 ~~(f)~~(h) Section 24-103-208, concerning other procurement
10 methods; OR
- 11 ~~(g)~~(i) Part 2 of article 38 of this ~~title~~ TITLE 24, concerning
12 public-private initiatives.

13 **SECTION 15.** In Colorado Revised Statutes, **add** 24-103-201.5
14 as follows:

15 **24-103-201.5. Market research - request for information.**

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

22 (2) A REQUEST FOR INFORMATION MAY BE USED AS A METHOD TO
23 OBTAIN PRELIMINARY INFORMATION ABOUT A MARKET OR TYPE OF
24 AVAILABLE SERVICE OR PRODUCT WHEN THERE IS NOT ENOUGH
25 INFORMATION READILY AVAILABLE TO WRITE AN ADEQUATE
26 SPECIFICATION OR STATEMENT OF WORK. A REQUEST FOR INFORMATION
27 MAY ASK FOR INPUT FROM POTENTIAL VENDORS TO ASSIST THE STATE IN

1 PREPARING A SPECIFICATION OR STATEMENT OF WORK FOR A SUBSEQUENT
2 SOLICITATION AND MAY ASK FOR PRICING INFORMATION ONLY WITH THE
3 PROVISION THAT SUCH INFORMATION WOULD BE SUBMITTED
4 VOLUNTARILY. THE REQUEST FOR INFORMATION MUST CLEARLY STATE
5 THAT NO AWARD WILL RESULT FROM THE REQUEST.

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

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

18 **SECTION 16.** In Colorado Revised Statutes, 24-103-202, **amend**
19 (1), (6), (7), and (9); and **repeal** (2)(b) as follows:

20 **24-103-202. Invitation for bids.** (1) Contracts shall be awarded
21 ~~by competitive sealed bidding~~ SOLICITED BY AN INVITATION FOR BIDS
22 except as otherwise provided in section 24-103-201.

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

27 (6) Withdrawal of inadvertently erroneous bids before the award

1 may be permitted pursuant to rules if the bidder submits proof of
2 evidentiary value which clearly and convincingly demonstrates that an
3 error was made. Except as otherwise provided by rules, all decisions to
4 permit the withdrawal of bids based on such bid mistakes shall be
5 supported by a written determination made by the ~~executive director or~~
6 ~~the head of a purchasing agency~~ CHIEF PROCUREMENT OFFICER OR THE
7 PROCUREMENT OFFICIAL.

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

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

26 **SECTION 17.** In Colorado Revised Statutes, **amend**
27 24-103-202.3 as follows:

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

10 (2) An invitation for ~~bids under competitive sealed~~ best value
11 ~~bidding~~ BIDS shall be made in the same manner as provided in section
12 24-103-202 (2), (3), and (4).

13 (3) (a) ~~The state purchasing director or the head of a purchasing~~
14 ~~agency~~ CHIEF PROCUREMENT OFFICER OR PROCUREMENT OFFICIAL may
15 allow a bidder to submit prices for enhancements, options, or alternatives
16 to the base bid for a commodity or service that will result in a product or
17 service to the state having the best value at the lowest cost. The invitation
18 for ~~bids for competitive sealed~~ best value ~~bidding~~ BIDS must clearly state
19 the purchase description of the commodity or service being solicited and
20 the types of enhancements, options, or alternatives that may be bid;
21 except that the functional specifications integral to the commodity or
22 service may not be reduced.

23 (b) Prices for enhancements, options, or alternatives to the bid
24 may be evaluated by the ~~state purchasing director or the head of a~~
25 ~~purchasing agency~~ CHIEF PROCUREMENT OFFICER OR PROCUREMENT
26 OFFICIAL to determine whether the total of the bid price and the prices for
27 enhancements, options, or alternatives provide a contract with the best

1 value at the lowest cost to the state. This evaluation shall be made
2 utilizing the rules of the executive director of the department of personnel
3 promulgated pursuant to ~~paragraph (d) of this subsection (3)~~ SUBSECTION
4 (3)(d) OF THIS SECTION.

5 (c) A contract may be awarded to a bidder where the total amount
6 of a bid price and the prices for enhancements, options, or alternatives of
7 the bidder exceed the total amount of the bid price and the prices for
8 enhancements, options, or alternatives of another bidder if it is
9 determined pursuant to ~~paragraph (b) of this subsection (3)~~ SUBSECTION
10 (3)(b) OF THIS SECTION that the higher total amount provides a contract
11 with the best value at the lowest cost to the state.

12 (d) The executive director of the department of personnel shall
13 promulgate rules to be utilized by the ~~state purchasing director or the head~~
14 ~~of a purchasing agency~~ CHIEF PROCUREMENT OFFICER OR PROCUREMENT
15 OFFICIAL in making the evaluation pursuant to ~~paragraph (b) of this~~
16 ~~subsection (3)~~ SUBSECTION (3)(b) OF THIS SECTION. The rules shall
17 provide:

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

20 (II) Criteria for objectively determining whether the prices for
21 enhancements, options, or alternatives provide the best value at the lowest
22 cost to the state.

23 (4) The contract shall be awarded with reasonable promptness by
24 ~~written notice to the low responsible bidder whose bid meets the~~
25 ~~requirements and criteria set forth in the invitation for bids except as~~
26 ~~otherwise provided for certain low tie bids under section 24-103-202.5~~
27 ~~PROVIDES FOR A CONTRACT WITH THE BEST VALUE AT THE LOWEST COST~~

1 TO THE STATE.

2 SECTION 18. In Colorado Revised Statutes, 24-103-203, amend
3 (1), (7), and (8); and repeal (4) as follows:

4 24-103-203. Requests for proposals. (1) ~~When, pursuant to~~
5 ~~rules, the executive director, the head of a purchasing agency, or a~~
6 ~~designee of either officer who is in a higher ranking employment position~~
7 ~~than a procurement officer determines in writing that the use of~~
8 ~~competitive sealed bidding is either not practicable or not advantageous~~
9 ~~to the state, A contract may be entered into by competitive sealed~~
10 REQUESTS FOR proposals. Competitive sealed REQUESTS FOR proposals
11 may be used for the procurement of professional services. ~~whether or not~~
12 ~~the determination described by this subsection (1) has been made.~~ The
13 executive director may provide by rule that it is neither practicable nor
14 advantageous to the state to procure specified types of supplies, services,
15 or construction by ~~competitive sealed bidding~~ AN INVITATION FOR BIDS.

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

21 (7) The award shall be made to the responsible offeror whose
22 proposal is determined in writing to be the most advantageous to the state,
23 taking into consideration the price and the evaluation factors set forth in
24 the request for proposals. No other factors or criteria shall be used in the
25 evaluation. The contract file shall contain the basis on which the award
26 is made. ~~A contract resulting from a competitive sealed proposal is not~~
27 ~~awarded until any protest made in connection with the proposal has been~~

1 ~~resolved pursuant to 24-109-102.~~ No property interest of any nature shall
2 accrue until the contract is awarded and signed by both parties.

3 (8) The procurement ~~officer~~ OFFICIAL, OR HIS OR HER DESIGNEE,
4 shall negotiate, in the case of procurement of professional services, with
5 the highest qualified offerors and in that negotiation shall take into
6 account, in the following order of importance, the professional
7 competence of the offerors, the technical merits of the offers, and the
8 price for which the services are to be rendered.

9 **SECTION 19.** In Colorado Revised Statutes, **amend** 24-103-205
10 as follows:

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

22 **SECTION 20.** In Colorado Revised Statutes, **amend** 24-103-206
23 as follows:

24 **24-103-206. Emergency procurements.** Notwithstanding any
25 other provision of this code, the executive director, THE CHIEF
26 PROCUREMENT OFFICER, the ~~head of a purchasing agency~~ PROCUREMENT
27 OFFICIAL, or a designee of ~~either~~ ANY SUCH officer may make or authorize

1 others to make emergency procurements when there exists a threat to
2 public health, welfare, or safety under emergency conditions, as defined
3 in rules, but such emergency procurements shall be made with such
4 competition as is practicable under the circumstances. A written
5 determination of the basis for the emergency and for the selection of the
6 particular contractor shall be included in the contract file.

7 **SECTION 21.** In Colorado Revised Statutes, **amend** 24-103-301
8 as follows:

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

19 **SECTION 22.** In Colorado Revised Statutes, **amend** 24-103-402
20 as follows:

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

25 **SECTION 23.** In Colorado Revised Statutes, 24-103-403, **amend**
26 **(1) and (3)(b);** and **repeal** (2) as follows:

27 **24-103-403. Cost or pricing data.** (1) A contractor shall, except

1 as provided in subsection (3) of this section, submit cost or pricing data
2 and shall certify that, to the best of his OR HER knowledge and belief, the
3 cost or pricing data submitted was accurate, complete, and current as of
4 a mutually determined specified date prior to the date of:

5 (a) The pricing of any contract awarded by ~~competitive sealed~~
6 REQUESTS FOR proposals AS SPECIFIED IN section 24-103-203, or pursuant
7 to the sole source procurement authority AS SPECIFIED IN section
8 24-103-205, where the total contract price is expected to exceed an
9 amount established by rule; or

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

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

18 (3) The requirements of this section need not be applied to any
19 contract in which:

20 (b) The contract price is based on established ~~catalogue~~ CATALOG
21 prices or market prices;

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

24 **24-103-701. Finality of determinations.** The determinations
25 required by sections ~~24-103-202 (6), 24-103-203 (1) and (7), 24-103-205,~~
26 ~~24-103-206, 24-103-401 (1), 24-103-403 (3), 24-103-501, 24-103-502,~~
27 ~~and 24-103-503 (2)~~ THIS CODE are final and conclusive unless they are

1 clearly erroneous, arbitrary, capricious, or contrary to law.

2 **SECTION 25.** In Colorado Revised Statutes, 24-103-803, **amend**
3 (3) and (4); and **repeal** (2)(b) as follows:

4 **24-103-803. Nonprofit agencies - self-certified vendor list -**
5 **creation.** (2) The department shall accept applications from any
6 nonprofit agency that seeks to become a self-certified vendor to bid on
7 certain services solicitations. In order for a nonprofit agency to become
8 a self-certified vendor, the nonprofit agency shall certify that:

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

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

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

25 **SECTION 26.** In Colorado Revised Statutes, **amend** 24-103-804
26 as follows:

27 **24-103-804. Services solicitations - categorical identification.**

1 (1) (a) The department of personnel shall publish a list of the services
2 that state agencies seek through services solicitations and shall make the
3 list available to nonprofit agencies on an annual basis. ~~As part of a~~
4 ~~nonprofit agency's application to become a self-certified vendor pursuant~~
5 ~~to section 24-103-803, the nonprofit agency shall specify the tasks and~~
6 ~~activities that it is able to perform for state agencies based on the list~~
7 ~~created by the department of personnel.~~ THE EXECUTIVE DIRECTOR SHALL
8 PROMULGATE RULES REGARDING THE PROCESS FOR REVIEW,
9 DETERMINATIONS, AND PUBLICATION OF A LIST THAT SHALL BE REFERRED
10 TO AS THE SERVICES SET ASIDE LIST.

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

17 (2) ~~After creating the tasks and activities list pursuant to~~
18 ~~subsection (1) of this section, the department shall meet with the state~~
19 ~~purchasing director or the director's designee to determine the types of~~
20 ~~services solicitations that would involve some or all of the tasks or~~
21 ~~activities specified on the list and that could be successfully performed by~~
22 ~~self-certified vendors. The department and the state purchasing director~~
23 ~~or the director's designee shall solicit input from the purchasing director~~
24 ~~of each state agency regarding the nature of services for which the state~~
25 ~~agency periodically issues solicitations for bids and the type of services~~
26 ~~that the state agency believes could be successfully performed by a~~
27 ~~self-certified vendor. Within ninety days after the establishment of the list~~

1 of tasks and activities created pursuant to subsection (1) of this section,
2 the department shall create a list of the types of services solicitations that
3 it deems appropriate for a self-certified vendor to perform. The list shall
4 be referred to as the "services set aside list". The department shall review
5 and update the list at least annually.

6 (3) The department shall provide the services set aside list to the
7 state purchasing director. The state purchasing director shall provide the
8 services set aside list to the purchasing director of each state agency and
9 shall make the list available to any nonprofit agency that is self-certified
10 to bid on services solicitations pursuant to this part 8.

11 **SECTION 27.** In Colorado Revised Statutes, 24-103-805, **amend**
12 (1), (5), (6), and (7) as follows:

13 **24-103-805. Contract set asides - bid process created by**
14 **department of personnel - obligation of state agencies - rules.**

15 (1) (a) Any state agency that intends to solicit bids for a service that is
16 included on the services set aside list created pursuant to section
17 24-103-804 shall first solicit bids from self-certified vendors for such
18 service and shall follow the procedures specified in ~~this subsection (1)~~
19 RULES PROMULGATED BY THE EXECUTIVE DIRECTOR.

20 ~~(a)~~ (b) If two or more self-certified vendors bid on the solicitation
21 for the services, the ~~purchasing director of the state agency~~ PROCUREMENT
22 OFFICIAL shall award a contract to one of the self-certified vendors based
23 on ~~a competitive price determination~~ WHICH ACCEPTABLE RESPONSE IS
24 MOST ADVANTAGEOUS TO THE STATE **TAKING INTO CONSIDERATION**
25 **FACTORS OTHER THAN PRICE ALONE.**

26 ~~(b)~~ (c) If one self-certified vendor bids on the solicitation for the
27 services, the ~~purchasing director of the state agency~~ PROCUREMENT

1 OFFICIAL shall award a contract to the self-certified vendor and shall
2 ensure that the contract is awarded at a fair and reasonable price of up to
3 fifteen percent above the fair market value of the services, subject to
4 available appropriations.

5 (e) (d) If the state agency does not receive a bid from any
6 self-certified vendor for the services, the state agency is permitted to
7 procure the services through other approved procurement methods and
8 shall not be subject to the requirements of this part 8 for that specific
9 solicitation.

10 (5) The department of personnel ~~shall~~ MAY promulgate rules to
11 implement the requirements of this section pursuant to section
12 24-102-101. Such rules shall be promulgated in accordance with the
13 provisions of article 4 of this ~~title~~ TITLE 24.

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

25 (7) Any ~~state agency that awards a services solicitation to a~~
26 self-certified vendor pursuant to this part 8 ~~shall include in the contract~~
27 ~~with such self-certified vendor the requirement that the vendor must~~

1 maintain the requirements to be a self-certified vendor pursuant to section
2 24-103-803 (2) for the DURATION OF THE SERVICES SET ASIDE LIST AND
3 FOR THE entire term of ~~the~~ ANY contract RESULTING FROM THE SERVICES
4 SET ASIDE LIST.

5 **SECTION 28.** In Colorado Revised Statutes, **add with amended**
6 **and relocated provisions** part 9 to article 103 of title 24 as follows:

7 PART 9

8 PROCUREMENT PREFERENCES AND GOALS

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

12 **24-103-902. [Formerly 24-103-202.5] Low tie bids - award**
13 **procedure and determination - bid preference.** (1) If low tie bids are
14 received in response to an invitation for bids for a supply contract, the
15 following procedures are required:

16 (a) If the low tie bids are from a resident bidder and a nonresident
17 bidder, the resident bidder shall be given preference over the nonresident
18 bidder;

19 (b) If the low tie bids are from resident bidders, the procurement
20 ~~officer~~ AGENT shall:

21 (I) Use a fair and reasonable procedure for determining which
22 bidder receives the contract award that at a minimum provides for the
23 presence, at the time and place the determination is made, of the bidders
24 or the bidders' representatives and an impartial witness designated by the
25 procurement ~~officer~~ AGENT who is not an employee of that procurement
26 ~~officer's~~ AGENT'S agency; and

27 (II) Give the bidders at least five business days' written notice by

1 certified mail of the date the determination will be made, of the procedure
2 for making the determination, and that the bidders or the bidders'
3 representatives may be present when the determination is made;

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

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

10 (2) If the procurement officer AGENT determines that compliance
11 with this section will cause denial of federal moneys that would otherwise
12 be available or would otherwise be inconsistent with federal law, this
13 section shall be suspended, but only to the extent necessary to prevent
14 denial of the moneys or to eliminate the inconsistency with federal law.

15 **24-103-903. [Formerly 24-103-207] State purchases of recycled**
16 **paper and recycled products - definitions.** (1) When purchasing paper
17 and paper products, ~~the executive director or any purchasing agent~~
18 PROCUREMENT AGENT shall, whenever the price is competitive and the
19 quality adequate for the purpose intended, purchase recycled paper, as
20 defined in section 13-1-133 (4)(d). ~~C.R.S.~~

21 (2) For the fiscal year 1990-91, the executive director shall
22 establish as a goal that at least ten percent of the total volume of paper
23 and paper products purchased by the state shall contain recycled paper.
24 The goal shall increase to twenty percent for the fiscal year 1991-92, to
25 thirty percent for the fiscal year 1992-93, to forty percent for the fiscal
26 year 1993-94, and to fifty percent for the fiscal year 1994-95, and for each
27 fiscal year thereafter.

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

4 (4) For purposes of this section, "paper and paper products" means
5 paper items, including but not limited to paper napkins, towels,
6 corrugated and other cardboard, toilet tissue, high-grade office paper,
7 newsprint, offset paper, bond paper, xerographic bond paper, mimeo
8 paper, and duplicator paper.

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

14 (a) The product is not available within a reasonable period of
15 time;

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

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

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

25 **24-103-904. [Formerly 24-103-207.5] Purchasing preference**
26 **for environmentally preferable products - definitions.** (1) As used in
27 this section, unless the context otherwise requires, "environmentally

1 preferable products" means products that have a lesser or reduced adverse
2 effect on human health and the environment when compared with
3 competing products that serve the same purpose. The product comparison
4 may consider such factors as the availability of any raw materials used in
5 the product being purchased and the availability, use, production, safe
6 operation, maintenance, packaging, distribution, disposal, or recyclability
7 of the product being purchased.

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

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

21 (a) The quality of the environmentally preferable products meets
22 the specification of the bid.

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

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

1 (d) The bid price for environmentally preferable products does not
2 exceed the lowest bid price for products that are not environmentally
3 preferable by more than five percent.

4 (e) The head of the governmental body or other official charged
5 by law with the duty to purchase products has made a determination that
6 the governmental body is able to purchase the environmentally preferable
7 products out of the governmental body's existing budget without any
8 further supplemental or additional appropriation.

9 ~~(f) (Deleted by amendment, L. 2008, p. 575, § 1, effective August~~
10 ~~5, 2008.)~~

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

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

27 (I) A life-cycle analysis conducted on the applicable product that

1 has been conducted in accordance with applicable standards as
2 determined by the purchasing governmental body or by the international
3 organization for standardization or any successor organization;

4 (II) A reference to an existing environmentally preferable product
5 list maintained by a state or the federal government that contains the
6 product; or

7 (III) A reference to a nationally recognized third-party
8 certification entity that has certified the product as environmentally
9 preferable on the basis of a valid life-cycle analysis. The governor's
10 energy office or successor office shall maintain a list of certification
11 entities.

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

15 (c) Notwithstanding any other provision of this section, if none of
16 the forms of documentation specified in ~~paragraph (a) of this subsection~~
17 ~~(5)~~ SUBSECTION (5)(a) OF THIS SECTION apply to the product being
18 purchased, the requirements of this section shall not apply to the purchase
19 of the product.

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

25 ~~(7)~~ (6) In connection with any cost of ownership analysis or
26 life-cycle analysis undertaken in connection with any purchase under this
27 section of a product that involves the replacement of existing electrical,

1 natural gas, or steam service, the cost analysis shall consider any stranded
2 utility costs.

3 **24-103-905. [Formerly 24-103-211] Service-disabled**
4 **veteran-owned small businesses - state procurement preference -**
5 **definitions.** (1) As used in this section, unless the context otherwise
6 requires:

7 (a) "Service-disabled veteran-owned small business" means a
8 business that is:

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

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

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

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

27 (3) When a state agency intends to award a contract to a business

1 in furtherance of the three percent goal specified in subsection (2) of this
2 section, the state agency shall, prior to awarding the contract, require the
3 business to submit to the agency documentation from the United States
4 department of veterans affairs that verifies that the business is a
5 service-disabled veteran-owned small business.

6 (4) On or before September 30, 2015, and on or before September
7 30 each year thereafter, the executive director shall submit a report
8 regarding the state's progress in satisfying the three percent goal
9 established in this section to the department of military and veterans
10 affairs, the members of the Colorado board of veterans affairs, and to the
11 members of the committees of the house of representatives and the senate
12 that have jurisdiction over state affairs and veterans affairs. The report
13 shall include the following:

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

17 (b) The total dollar amount of contracts that all state agencies
18 awarded to service-disabled veteran-owned small businesses in the prior
19 fiscal year and the percentage that such dollar amount bears to the total
20 dollar amount of contracts awarded by all state agencies in the prior fiscal
21 year; AND

22 (c) The total dollar amount of contracts that each state agency
23 awarded to service-disabled veteran owned small businesses in the prior
24 fiscal year and the percentage that such dollar amount bears to the total
25 dollar amount of contracts awarded by the state agency in the prior fiscal
26 year. and

27 ~~(d) The total number of service-disabled veteran owned small~~

1 ~~businesses that responded to solicitation for bids or proposals issued by~~
2 ~~all state agencies in the prior fiscal year and the total number of such~~
3 ~~businesses that responded to solicitations for bids or proposals issued by~~
4 ~~each state agency.~~

5 **24-103-906. [Formerly 8-18-101] Bid preference - state**
6 **contracts.** (1) (a) Except as provided in ~~paragraph (b) of this subsection~~
7 ~~(1) SUBSECTION (1)(b) OF THIS SECTION~~ and in ~~section 8-18-103 SECTION~~
8 24-103-907, when a contract for commodities or services is to be awarded
9 to a bidder, a resident bidder ~~as defined in section 8-19-102 (2)~~ shall be
10 allowed a preference against a nonresident bidder equal to the preference
11 given or required by the state in which the nonresident bidder is a
12 resident.

13 (b) Notwithstanding ~~paragraph (a) of this subsection (1)~~
14 SUBSECTION (1)(a) OF THIS SECTION, when an invitation for bids for a
15 contract for the purchase of commodities results in a low tie bid, ~~as~~
16 ~~defined in section 24-103-101, C.R.S.,~~ the provisions of ~~section~~
17 ~~24-103-202.5, C.R.S.~~ SECTION 24-103-902, apply.

18 (c) For the purposes of this subsection (1), "commodities"
19 includes supplies as defined in ~~section 24-101-301 (22), C.R.S.~~ SECTION
20 24-101-301 (47).

21 (2) If it is determined by the ~~officer~~ PROCUREMENT AGENT
22 responsible for awarding the bid that compliance with this section may
23 cause denial of federal moneys which would otherwise be available or
24 would otherwise be inconsistent with requirements of federal law, this
25 section shall be suspended, but only to the extent necessary to prevent
26 denial of the moneys or to eliminate the inconsistency with federal
27 requirements.

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

3 **24-103-907. [Formerly 8-18-103] Preference for state**
4 **agricultural products.** (1) When purchasing agricultural products, a
5 governmental body ~~as defined in section 24-101-301 (10), C.R.S.,~~ shall
6 award the contract to a resident bidder ~~as defined in section 8-19-102 (2),~~
7 who produces products in the state, subject to the conditions in subsection
8 (2) of this section.

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

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

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

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

17 (d) (I) The resident bidder's bid or quoted price for products
18 produced in the state does not exceed the lowest bid or price quoted for
19 products produced outside the state or the resident bidder's bid or quoted
20 price reasonably exceeds the lowest bid or price quoted for products
21 produced outside the state.

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

1 appropriation.

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

4 (b) A resident bidder that seeks to qualify for the preference
5 created by subsection (1) of this section shall certify to the governmental
6 body inviting the bid and provide documentation confirming that the
7 resident bidder's agricultural product was produced in the state. The
8 governmental body may rely in good faith on such certification and
9 documentation.

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

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

16 **24-103-908. Bid preferences - resident bidder - public projects**
17 **- report - federal and state law - definitions. (1) [Formerly 8-19-102]**

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

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

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

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

26 (b) Any publicly funded contract for construction entered into by
27 a governmental body of the executive branch of this state which is subject

1 to the "Procurement Code", articles ~~101 to 112~~ of title 24, C.R.S. THIS
2 CODE; and

3 (c) Any highway or bridge construction, whether undertaken by
4 the department of transportation or by any political subdivision of this
5 state, in which the expenditure of funds may be reasonably expected to
6 exceed fifty thousand dollars.

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

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

11 ~~(b) A person, partnership, corporation, or joint venture which:~~

12 ~~(I) Is authorized to transact business in Colorado;~~

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

14 ~~(III) Has paid Colorado unemployment compensation taxes in at~~
15 ~~least six of the eight quarters immediately prior to bidding on a~~
16 ~~construction contract for a public project.~~

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

22 (b) **[Formerly 8-19-101 (2)]** If it is determined by the officer
23 PROCUREMENT AGENT responsible for awarding the bid that compliance
24 with this section may cause denial of federal moneys which would
25 otherwise be available or would otherwise be inconsistent with
26 requirements of federal law, this section shall be suspended, but only to
27 the extent necessary to prevent denial of the moneys or to eliminate the

1 inconsistency with federal requirements.

2 (3) (a) **[Formerly 8-19-104 (1)]** The executive director of the
3 department of personnel, or the executive director's designee, shall USE
4 A NATIONAL REGISTRY OF BIDDING PREFERENCES PUBLISHED BY ANOTHER
5 STATE OR NATIONAL ORGANIZATION OR SHALL conduct a survey and
6 compile the results into a list of which states provide a bidding preference
7 on public works contracts for their resident bidders. The list must include
8 details on the type of preference provided by each state, the amount of the
9 preference, and how the preference is applied. The executive director
10 shall complete the initial list on or before July 1, 2014, shall update the
11 list periodically as needed but at least on an annual basis, and shall make
12 the list available to the public on the department's website.

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

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

25 (d) **[Formerly 8-19-104 (4)]** The executive director of the
26 department of personnel shall MAY promulgate rules necessary for the
27 implementation of this section. Such rules shall be promulgated in

1 accordance with the "State Administrative Procedure Act", article 4 of
2 THIS title 24. ~~C.R.S.~~

3 (4) **[Formerly 8-19-105]** Nothing in this ~~article~~ SECTION applies
4 to any project that receives federal moneys. In addition, nothing in this
5 ~~article~~ SECTION contravenes any existing treaty, law, agreement, or
6 regulation of the United States. Contracts entered into in accordance with
7 any treaty, law, agreement, or regulation of the United States do not
8 violate this ~~article~~ SECTION to the extent of that accordance. The
9 requirements of this ~~article~~ SECTION are suspended if such requirement
10 would contravene any treaty, law, agreement, or regulation of the United
11 States, or would cause denial of federal moneys or preclude the ability to
12 access federal moneys that would otherwise be available.

13 **24-103-909. [Formerly 8-19.5-101] Bid preference - recycled**
14 **plastic products.** (1) When a contract is to be awarded ~~in a public~~
15 ~~project~~ PURSUANT TO THIS CODE, a bidder who has used recycled plastics
16 in the manufacture of the commodity or supplies described in the bid shall
17 be allowed a preference of up to five percent for finished products which
18 contain no less than ten percent recycled plastics.

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

26 (3) ~~For purposes of this section, "public project" means any~~
27 ~~publicly funded contract entered into by a governmental body of the~~

1 executive branch of this state which is subject to the "Procurement Code",
2 articles ~~101 to 112~~ of title 24, C.R.S.

3 **24-103-910. [Formerly 24-103-210] Use of foreign-produced**
4 **goods - iron, steel, and related manufactured products - disclosure -**
5 **report - definitions.** (1) The contractor for any public works project that
6 is funded by a state agency as defined in section 24-30-1301 (17) or by a
7 state institution of higher education as defined in section 24-30-1301 (18),
8 that does not receive any federal moneys, and that costs more than five
9 hundred thousand dollars shall, upon completion of the project, make a
10 good faith effort to disclose to the department of personnel the five most
11 costly goods incorporated into the project, including iron, steel, or related
12 manufactured goods; except that, for public projects under the
13 supervision of the department of transportation, the contractor shall
14 disclose such information to the department of transportation.

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

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

22 (c) In order for a manufactured good to be considered subject to
23 disclosure under this ~~article~~ ARTICLE 103, the product must be
24 manufactured predominantly of steel or iron. The manufactured good is
25 deemed a product manufactured predominantly of steel or iron if the
26 product consists of more than fifty percent steel or iron content when it
27 is delivered to the job site for installation.

1 (3) The disclosure must state the total cost and country of origin
2 of the five most costly goods used on a project, including iron, steel, and
3 related manufactured goods described pursuant to subsections (1) and (2)
4 of this section. The contractor may rely on documents provided by
5 third-party vendors when disclosing the country of origin of iron, steel,
6 or related manufactured goods. In addition, the disclosure must state
7 whether the public works project was subject to any existing domestic
8 content preference, including 41 U.S.C. secs. 8301 to 8305, 23 U.S.C.
9 sec. 313, 49 U.S.C. sec. 5323, 49 U.S.C. sec. 24305, 49 U.S.C. sec.
10 24405, and 49 U.S.C. secs. 50101 to 50105. The contractor shall disclose
11 the information in a manner to be determined by the department.

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

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

23 (a) "Country of origin" shall have the meaning ascribed to it under
24 19 U.S.C. sec. 1304 and 19 CFR 134.

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

27 (c) "United States" means the United States of America and

1 includes all territory, continental or insular, subject to the jurisdiction of
2 the United States.

3 (6) Nothing in this section applies to any project that receives
4 federal moneys. In addition, nothing in this section contravenes any
5 existing treaty, law, agreement, or regulation of the United States.
6 Contracts entered into in accordance with any treaty, law, agreement, or
7 regulation of the United States do not violate this section to the extent of
8 that accordance. The requirements of this section are suspended if such
9 requirements would contravene any treaty, law, agreement, or regulation
10 of the United States, or would cause denial of federal moneys or preclude
11 the ability to access federal moneys that would otherwise be available.

12 **SECTION 29.** In Colorado Revised Statutes, **amend** 24-104-201
13 as follows:

14 **24-104-201. Executive director - rules.** The executive director
15 ~~shall~~ MAY promulgate rules governing the preparation, maintenance, and
16 content of specifications for supplies, services, and construction required
17 by the state.

18 **SECTION 30.** In Colorado Revised Statutes, **amend** 24-104-202
19 as follows:

20 **24-104-202. Duties of the chief procurement officer -**
21 **specifications.** The ~~executive director~~ CHIEF PROCUREMENT OFFICER shall
22 prepare, issue, revise, maintain, and monitor the use of specifications for
23 supplies, services, and construction required by the state.

24 **SECTION 31.** In Colorado Revised Statutes, **amend** 24-104-204
25 as follows:

26 **24-104-204. Relationship with using agencies.** The ~~executive~~
27 ~~director~~ CHIEF PROCUREMENT OFFICER may obtain expert advice and

1 assistance from personnel of using agencies in the development of
2 specifications and may delegate, in writing, to a using agency the
3 authority to prepare and utilize its own specifications.

4 **SECTION 32.** In Colorado Revised Statutes, **add with amended**
5 **and relocated provisions** 24-104-208 as follows:

6 **24-104-208. [Formerly 24-103-209] Purchase of compost by**
7 **governmental bodies - definitions.** (1) In addition to any other
8 applicable requirement specified in the code, no compost may be
9 purchased by a governmental body ~~as defined in section 24-101-301,~~
10 unless the compost satisfies minimum standards specified by the
11 department of agriculture.

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

17 **SECTION 33.** In Colorado Revised Statutes, **amend** 24-105-101
18 as follows:

19 **24-105-101. Responsibility for selection of methods of**
20 **construction contracting management.** The executive director ~~shall~~
21 MAY promulgate rules providing for as many alternative methods of
22 construction contracting management as he OR SHE may determine to be
23 feasible. These rules ~~shall~~ MAY set forth criteria to be used in determining
24 which method of construction contracting management is to be used for
25 a particular project, grant to the head of a division within the department
26 or the ~~head of a purchasing agency which~~ PROCUREMENT OFFICIAL WHO
27 is responsible for carrying out the construction project the discretion to

1 select the appropriate method of construction contracting management for
2 a particular project, and require the procurement officer AGENT to execute
3 and include in the contract file a written statement setting forth the facts
4 which led to the selection of a particular method of construction
5 contracting management for each project.

6 **SECTION 34.** In Colorado Revised Statutes, 24-105-201, **amend**
7 (1) as follows:

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

16 **SECTION 35.** In Colorado Revised Statutes, 24-105-301, **amend**
17 (1) introductory portion, (2)(a)(V), and (4) as follows:

18 **24-105-301. Contract clauses and their administration.**
19 (1) The executive director ~~shall~~ MAY promulgate rules requiring the
20 inclusion in state construction contracts of clauses providing for
21 adjustments in prices, time of performance, and other appropriate contract
22 provisions affected by and covering the following subjects:

23 (2) (a) Adjustments in price shall be computed in one or more of
24 the following ways:

25 (V) In the absence of agreement by the parties, by a unilateral
26 determination by the state of the costs attributable to the events or
27 situations under such clauses with adjustment of profit or fee, all as

1 computed by the state pursuant to the applicable sections of any rules
2 issued under ~~article 107 of this title~~ SECTION 24-106-108, and subject to
3 the provisions of article 109 of this ~~title~~ TITLE 24.

4 (4) The 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) AND SECTION 24-30-1303 (1)(s)(IV). ~~However,~~
7 ~~the head of a division within the department designated by the executive~~
8 ~~director or the head of a purchasing agency may vary the clauses for~~
9 ~~inclusion in any particular state construction contract so long as any~~
10 ~~variations are supported by a written determination that describes the~~
11 ~~circumstances justifying such variations and notice of any material~~
12 ~~variation is stated in the invitation for bids or request for proposals. No~~
13 ~~variation that is inconsistent with section 24-91-103.5 (1) and (2) shall be~~
14 ~~made pursuant to this subsection (4).~~

15 **SECTION 36.** In Colorado Revised Statutes, **amend** 24-105-302
16 as follows:

17 **24-105-302. Fiscal responsibility.** Every contract modification
18 ~~change order~~, or contract price adjustment under a construction contract
19 with the state in excess of an amount specified in the contract shall be
20 subject to prior written certification by the controller or other official
21 responsible for monitoring and reporting upon the status of the costs of
22 the total project or contract budget as to the effect of the contract
23 modification ~~change order~~, or adjustment in contract price on the total
24 project or contract budget. In the event that the certification of the
25 controller or other responsible official discloses a resulting increase in the
26 total project or contract budget, the procurement ~~officer~~ AGENT shall not
27 execute or make such contract modification ~~change order~~, or adjustment

1 in contract price unless sufficient funds are available therefor or the scope
2 of the project or contract is adjusted so as to permit the degree of
3 completion that is feasible within the total project or contract budget as
4 it existed prior to the contract modification ~~change order~~, or adjustment
5 in contract price under consideration; except that, with respect to the
6 validity of any executed contract modification ~~change order~~, or
7 adjustment in contract price which the contractor has reasonably relied
8 upon, it shall be presumed that there has been compliance with the
9 provisions of this section.

10 **SECTION 37.** In Colorado Revised Statutes, 24-106-101, **amend**
11 (3)(d) and (4) as follows:

12 **24-106-101. Contract clauses - price adjustments - additional**
13 **clauses - modification.** (3) The executive director may promulgate rules
14 including, but not limited to, rules permitting or requiring the inclusion
15 in state contracts of clauses providing for appropriate remedies and
16 covering the following subjects:

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

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

1 to this subsection (4).

2 **SECTION 38.** In Colorado Revised Statutes, **add with amended**
3 **and relocated provisions** 24-106-102, 24-106-103, 24-106-104,
4 24-106-105, 24-106-106, 24-106-107, and 24-106-108 as follows:

5 **24-106-102. [Formerly 24-101-103] Supplementary general**
6 **principles of law applicable.** Unless displaced by the particular
7 provisions of this code, the principles of law and equity, including the
8 "Uniform Commercial Code", the law merchant, and any law relative to
9 capacity to contract, agency, fraud, misrepresentation, duress, coercion,
10 mistake, or bankruptcy shall supplement the provisions of this code.

11 **24-106-103. [Formerly 24-102-205] Centralized contract**
12 **management system - personal services contracts - legislative**
13 **declaration - definitions.** (1) (a) The general assembly hereby finds and
14 declares that by enacting this section the general assembly intends to
15 CENTRALIZE THE LOCATION OF INFORMATION ABOUT PERSONAL SERVICES
16 CONTRACTS AND PROVIDE FOR LEGISLATIVE, EXECUTIVE, AND PUBLIC
17 ACCESS TO ALL PERSONAL SERVICES CONTRACTS ENTERED INTO BY ANY
18 GOVERNMENTAL BODY.

19 ~~(I) Establish a policy of open competition for personal services~~
20 ~~contracts unless the competition is specifically exempted under this~~
21 ~~section;~~

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

24 ~~(III) Centralize the location of information about personal services~~
25 ~~contracts for the purpose of facilitating public review of such contracts;~~
26 ~~and~~

27 ~~(IV) Ensure the proper accounting of expenditures for personal~~

1 services.

2 (b) For purposes of this section, "governmental body" shall have
3 the same meaning as set forth in ~~section 24-101-301 (10)~~ SECTION
4 24-101-301 (18); except that, for purposes of this section, "governmental
5 body" shall also include elected officials.

6 (c) ~~(Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p.
7 1852, § 31, effective June 9, 2010.)~~

8 (2) This section shall apply to any personal services contract to
9 which the state is a party the value of which exceeds one hundred
10 thousand dollars with the exception of any contract to which the state is
11 a party under medicare, the "Colorado Medical Assistance Act", articles
12 4 to 6 of title 25.5, ~~C.R.S.~~, the "Children's Basic Health Plan Act", article
13 8 of title 25.5, ~~C.R.S.~~, or the "Colorado Indigent Care Program", part 1 of
14 article 3 of title 25.5. ~~C.R.S.~~

15 (3) (a) On or before June 30, 2009, the department shall
16 implement and maintain a centralized contract management system for
17 the purpose of monitoring all personal services contracts entered into by
18 a governmental body that are subject to the requirements of this section.
19 With respect to each contract entered into by a governmental body,
20 information contained in the system shall include, without limitation, the
21 following:

22 (I) The governmental body that entered into the personal services
23 contract;

24 (II) The persons or entities with which the governmental body is
25 contracting;

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

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

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

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

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

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

16 ~~(IX)~~ (VII) Whether any services under the personal services
17 contract, or any subcontracts to the contract that directly relate to the
18 services provided under the contract, are anticipated to be performed
19 outside the United States or the state as disclosed in the statement of work
20 pursuant to section 24-102-206 and the vendor's justification for obtaining
21 services outside the United States or the state in accordance with the
22 requirements of section 24-102-206; and

23 ~~(X)~~ (VIII) Upon completion of the personal services contract, the
24 extent as disclosed by the vendor to which any services under the
25 contract, or any subcontracts to the contract that directly relate to the
26 services provided under the contract, were performed outside the United
27 States or the state.

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

6 (c) The centralized contract management system required to be
7 maintained by the department pursuant to ~~paragraph (a) of this subsection~~
8 ~~(3)~~ SUBSECTION (3)(a) OF THIS SECTION shall be a publicly available
9 database of all personal services contracts entered into by any
10 governmental body, accessible from the website maintained by the state.
11 Information concerning contracts contained in the database and accessible
12 on the website shall be searchable by criteria enumerated in
13 subparagraphs (I) to ~~(X)~~ (VIII) of ~~paragraph (a) of this subsection (3)~~
14 SUBSECTION (3)(a) OF THIS SECTION. Information in the database shall be
15 either presented in plain and nontechnical language or by means of key
16 terms that are clearly and easily defined.

17 ~~(d) The centralized contract management system required to be~~
18 ~~maintained by the department pursuant to paragraph (a) of this subsection~~
19 ~~(3) shall identify the number of employment positions to be filled under~~
20 ~~any personal services contract that was previously performed by classified~~
21 ~~civil service employees, in addition to the total number of positions, if~~
22 ~~any, eliminated by the contract. In the case of any contract that is more~~
23 ~~than one year in duration, the system shall identify the cost savings, if~~
24 ~~any, and quality improvements, if any, realized by the state as a result of~~
25 ~~the contract.~~

26 (e) (d) Any new personal services contracts subject to the
27 requirements of this section shall be added to the centralized contract

1 management system maintained by the department pursuant to ~~paragraph~~
2 ~~(a) of this subsection (3)~~ SUBSECTION (3)(a) OF THIS SECTION not more
3 than thirty days after the execution of the contract.

4 (4) The centralized contract management system required to be
5 maintained by the department pursuant to ~~paragraph (a) of subsection (3)~~
6 SUBSECTION (3)(a) of this section shall include information concerning
7 personal services expenditures by the governmental body and types of
8 services. The types of services that may be designated shall include,
9 without limitation, professional technical, nonprofessional support,
10 purchased services, architectural, engineering and construction trades, and
11 professional equipment repair.

12 (5) ~~(a) Subject to the provisions of paragraph (b) of this~~
13 ~~subsection (5);~~ Prior to entering into a sole-source personal services
14 contract, the governmental body shall attempt to identify competing
15 vendors by placing a notice on the state's ~~bid notification website~~
16 ELECTRONIC PROCUREMENT SYSTEM for not less than three business days.
17 If the governmental body receives ~~not less than two~~ ANY responses to the
18 notice from qualified and responsible vendors that are able to meet the
19 specifications identified in the notice and that are not otherwise
20 prohibited from bidding on the contract, the sole-source selection method
21 shall not be used.

22 ~~(b) Notwithstanding the requirements of paragraph (a) of this~~
23 ~~subsection (5), the director of a governmental body or his or her designee~~
24 ~~may enter into or authorize others to enter into an emergency sole-source~~
25 ~~personal services contract on behalf of the governmental body where an~~
26 ~~emergency condition is present and a sole-source personal services~~
27 ~~contract is necessary to ensure that the required services are obtained in~~

1 sufficient time to address the emergency. Where the governmental body
2 enters into an emergency sole-source personal services contract pursuant
3 to this paragraph (b), the centralized contract management system
4 required by paragraph (a) of subsection (3) of this section, and any
5 contract file maintained thereunder, shall include a written determination
6 that specifies the basis for the determination that an emergency condition
7 is present and the basis for the selection of the vendor retained to perform
8 the sole-source contract. A sole-source personal services contract
9 authorized pursuant to this paragraph (b) shall be limited to the quantity
10 of personal services and duration necessary to address the emergency.

11 (c) For purposes of paragraph (b) of this subsection (5),
12 "emergency condition" means a situation that creates an imminent threat
13 to the public health, welfare, or safety as may arise by reason of, without
14 limitation, a flood, epidemic, riot, catastrophic equipment failure or
15 similar threat to the public health, welfare, or safety as determined by the
16 director of the governmental body or his or her designee.

17 (6) Upon the completion of each personal services contract, the
18 governmental body that was a party to the contract shall evaluate the
19 vendor that performed the contract. The evaluation performed by the
20 governmental body shall be submitted to the vendor to allow the vendor
21 to review the evaluation and to submit any comments in response to the
22 evaluation, after which point the evaluation, including any response
23 submitted by the vendor, shall be added to the centralized contract
24 management system maintained by the department pursuant to paragraph
25 (a) of subsection (3) of this section. The evaluation shall become publicly
26 available thirty days after completion of the contract. The evaluation shall
27 measure, without limitation, the performance of the vendor in meeting

1 contractual requirements relating to quality, cost, and deadlines. If the
2 vendor disputes any information contained in the evaluation, the vendor
3 may exercise the contract dispute rights specified in section 24-109-106,
4 24-109-107, 24-109-201, or 24-109-202. If, upon completion of an appeal
5 filed with the executive director or the Denver district court, as
6 applicable, the vendor is not satisfied with the resolution of the appeal,
7 the vendor may file a rebuttal statement that shall be maintained as part
8 of the vendor evaluation record. The vendor's sole remedy in contesting
9 any evaluation shall be removal of the evaluation, correction of the
10 evaluation, or submission of the rebuttal statement in accordance with the
11 requirements of this subsection (6).

12 (7)(a) Commencing on September 30, 2007, until such time as the
13 development of the system created in paragraph (a) of subsection (3) of
14 this section is complete, the department shall provide reports on a
15 quarterly basis to the joint budget committee of the general assembly
16 concerning the status of the development of the system.

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

22 (c) With respect to any sole-source personal services contract
23 identified in the system required to be maintained by the department
24 pursuant to paragraph (a) of subsection (3) of this section, the department
25 shall submit an annual report to the legislative council of the general
26 assembly created in section 2-3-301 (1), C.R.S., concerning any new
27 contract entered into by the state during the prior calendar year. Each

1 report shall describe, without limitation, the following:

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

5 (II) ~~The justification provided by the governmental body for the~~
6 ~~use of the sole-source contracting provisions in section 24-103-205 and~~
7 ~~the steps taken to determine if a vendor is the only available source for~~
8 ~~the required supply, service, or construction item.~~

9 (8) ~~The implementation of the database required to be maintained~~
10 ~~by the department pursuant to paragraph (a) of subsection (3) of this~~
11 ~~section shall be funded in two phases, with a portion of the funding~~
12 ~~provided in the 2007-08 state fiscal year, and a portion of the funding~~
13 ~~provided in the 2008-09 state fiscal year.~~

14 (9) ~~To accomplish the legislative intent underlying subparagraph~~
15 ~~(III) of paragraph (a) of subsection (1) of this section, the office of~~
16 ~~contract administration is hereby created in the department, which office~~
17 ~~shall be funded within existing appropriations.~~

18 **24-106-104. [Formerly 24-103-501] Types of contracts.** Subject
19 to the limitations of this section, any type of contract which will promote
20 the best interests of the state may be used; except that the use of a
21 cost-plus-a-percentage-of-cost contract is prohibited. A
22 CONTINGENCY-BASED CONTRACT MAY BE USED ONLY UPON APPROVAL BY
23 THE GOVERNOR'S OFFICE OF STATE PLANNING AND BUDGETING PURSUANT
24 TO SECTION 24-17-204. A cost-reimbursement contract may be used only
25 when a determination is made in writing that such contract is likely to be
26 less costly to the state than any other type of contract or that it is
27 impracticable to obtain the supplies, services, or construction required

1 unless the cost-reimbursement contract is used.

2 **24-106-105. [Formerly 24-103-503] Multiyear contracts.**

3 (1) Unless otherwise provided by law, a contract for supplies or services
4 may be entered into for any period of time deemed to be in the best
5 interests of the state if the term of the contract and conditions of renewal
6 or extension, if any, are included in the solicitation and if funds are
7 available for the first year at the time of contracting. IF THE CHIEF
8 PROCUREMENT OFFICER DETERMINES THAT EXTENUATING CIRCUMSTANCES
9 EXIST AND AN EXTENSION OF THE CONTRACT BEYOND THE TERM INCLUDED
10 IN THE SOLICITATION IS IN THE BEST INTEREST OF THE GOVERNMENTAL
11 BODY, THEN THE CHIEF PROCUREMENT OFFICER MAY APPROVE A LONGER
12 TERM FOR A REASONABLE TIME BASED ON WHAT IS PRACTICABLE AND
13 NECESSARY GIVEN THE CIRCUMSTANCES. The state shall initiate the
14 renewal or extension of a contract for supplies or services. Payment and
15 performance obligations for succeeding fiscal years shall be subject to the
16 availability and appropriation of funds therefor.

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

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

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

24 (3) When funds are not appropriated or otherwise made available
25 to support continuation of performance in a subsequent fiscal year, the
26 contract shall be cancelled, and the contractor may be reimbursed for the
27 reasonable value of any nonrecurring costs incurred but not amortized in

1 the price of the supplies or services delivered under the contract.

2 **24-106-106. [Formerly 24-103-601] Right to audit records.**

3 ~~(1) (Deleted by amendment, L. 2007, p. 1237, § 2, effective August 3,~~
4 ~~2007.)~~

5 ~~(2)~~ The state shall be entitled to audit the books and records of any
6 contractor or subcontractor under any negotiated contract or subcontract
7 to the extent that the books and records relate to the performance of a
8 state contract or subcontract, if the state is able, in conducting any such
9 audit, to maintain the confidentiality of any information contained in the
10 books and records that is deemed proprietary as determined by the state.
11 Such books and records shall be maintained by the contractor for a period
12 of ~~three~~ SIX years after the date of final payment under the prime contract
13 and by the subcontractor for a period of ~~three~~ SIX years after the date of
14 final payment under the subcontract, unless a shorter period is otherwise
15 authorized in writing.

16 **24-106-107. [Formerly 24-103.5-101] Monitoring of vendor**
17 **performance - definitions.** (1) ~~(a)~~ For purposes of this section,
18 "governmental body" ~~shall have~~ HAS the same meaning as set forth in
19 ~~section 24-101-301 (10)~~ SECTION 24-101-301 (18); except that, for
20 purposes of this section, "governmental body" shall also include elected
21 officials.

22 ~~(b) (Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p.~~
23 ~~1853, § 32, effective June 9, 2010.)~~

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

26 (a) Performance measures and standards developed specifically
27 for the contract by the governmental body administering the contract. The

1 performance measures and standards shall be negotiated by the
2 governmental body and the vendor prior to execution of the contract and
3 shall be incorporated into the contract. The measures and standards shall
4 be used by the governmental body to evaluate the performance of ~~the~~
5 ~~governmental body and~~ the vendor under the contract.

6 (b) An accountability section that requires the vendor to report
7 regularly on achievement of the performance measures and standards
8 specified in the contract and that allows the governmental body to
9 withhold payment until successful completion of all or part of the contract
10 and the achievement of established performance standards. The
11 accountability section shall include a requirement that payment by the
12 governmental body to the vendor shall be made without delay upon
13 successful completion of all or any part of the contract in accordance with
14 the payment schedule specified in the contract or as otherwise agreed
15 upon by the parties.

16 (c) Monitoring requirements that specify how the governmental
17 body ~~and the vendor will evaluate each other's~~ THE VENDOR'S
18 performance, including progress reports, site visits, inspections, and
19 reviews of performance data. The governmental body shall use one or
20 more monitoring processes to ensure that the results, objectives, and
21 obligations of the contract are met.

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

25 (3) Each governmental body administering the personal services
26 contract shall, within existing resources of the governmental body,
27 designate ~~at least one person~~ A CONTRACT MANAGER WITH SUBJECT

1 MATTER EXPERTISE within the governmental body responsible for
2 monitoring whether the criteria described in subsection (2) of this section
3 are met, whether and to what extent the contract was completed according
4 to the performance schedule specified in the contract, satisfaction of the
5 scope of the vendor's work as specified in the contract, and whether and
6 to what extent the vendor met or exceeded budgetary requirements under
7 the contract DAY-TO-DAY MANAGEMENT OF THE CONTRACT, INCLUDING
8 PERFORMANCE MONITORING.

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

14 (5) (4) ~~In the case of a contract that has been renewed in a~~
15 ~~subsequent fiscal year, the governmental body shall certify annually~~
16 ~~whether the vendor on any contract is complying with the terms of the~~
17 ~~contract. If the governmental body determines that the vendor has not~~
18 ~~complied with the contract terms, including but not limited to~~
19 ~~performance standards and measurable outcomes, the state MAY PURSUE~~
20 ~~REMEDIES IN ACCORDANCE WITH ARTICLE 109 OF THIS TITLE 24 AND shall~~
21 ~~be entitled to any remedy available under law in the case of contract~~
22 ~~nonperformance, including but not limited to termination of the contract~~
23 ~~and the return of any and all payments made to the vendor by the state~~
24 ~~under the contract; except that the recovery of any moneys by the state~~
25 ~~shall be reduced by the value of any contractual benefits realized by the~~
26 ~~state from partial performance by the vendor under the contract. If a~~
27 ~~vendor is deemed to be in default under any one particular contract with~~

1 the state, the state may, upon a showing of good cause, declare any or all
2 other contracts it has entered into with the vendor to be in default.

3 ~~(6) The centralized contract management system required by~~
4 ~~section 24-102-205 (3) (a) shall include such information as will allow~~
5 ~~the executive director and the governmental body to evaluate the prior~~
6 ~~record of a particular vendor in meeting performance measures and~~
7 ~~standards under paragraph (a) of subsection (2) of this section in~~
8 ~~connection with a personal services contract to which it has been a party.~~
9 ~~If a particular vendor demonstrates a gross failure to meet such~~
10 ~~performance measures and standards in connection with one or more~~
11 ~~contracts to which it has been a party, the executive director, upon the~~
12 ~~request of and with a showing of good cause by a governmental body,~~
13 ~~may remove the name of the vendor from the database and prohibit the~~
14 ~~vendor from bidding on future contracts. Upon a showing of good cause~~
15 ~~by a vendor or governmental body, the executive director may reinstate~~
16 ~~the name of the vendor to the database. If a vendor disputes the removal~~
17 ~~of its name from the database or the prohibition of the vendor from~~
18 ~~bidding on future contracts, the vendor may exercise the debarment~~
19 ~~protest and appeal rights specified in section 24-109-105, 24-109-107,~~
20 ~~24-109-201, or 24-109-202. If, upon completion of an appeal filed with~~
21 ~~the executive director or the Denver district court, as applicable, the~~
22 ~~vendor is not satisfied with the resolution of the appeal, the vendor may~~
23 ~~file a rebuttal statement that shall be maintained as part of the vendor~~
24 ~~evaluation record. The vendor's sole remedy in contesting such removal~~
25 ~~or prohibition shall be reversal of the debarment or submission of the~~
26 ~~rebuttal statement in accordance with the requirements of this subsection~~
27 ~~(6).~~

1 ~~(7)~~ (5) Notwithstanding any other provision of this section,
2 (a) nothing in this section shall be construed to apply to any
3 contract to which the state is a party under medicare, the "Colorado
4 Medical Assistance Act", articles 4 to 6 of title 25.5, ~~C.R.S.~~, the
5 "Children's Basic Health Plan Act", article 8 of title 25.5, ~~C.R.S.~~, or the
6 "Colorado Indigent Care Program", part 1 of article 3 of title 25.5. ~~C.R.S.~~
7 ~~(b) The provisions of this section shall not take effect until the~~
8 ~~centralized contract management system required by section 24-102-205~~
9 ~~(3)(a) has been implemented.~~

10 **24-106-108. [Formerly 24-107-101] Administrative rules - cost**
11 **reimbursement.** The executive director may promulgate rules setting
12 forth cost principles which may be used to determine the allowability of
13 incurred costs for the purpose of reimbursing costs under contract
14 provisions which provide for the reimbursement of costs. ~~except that, if~~
15 ~~a written determination is approved by a person who is in a higher~~
16 ~~ranking employment position than a procurement officer, such cost~~
17 ~~principles may be modified by contract.~~

18 **SECTION 39.** In Colorado Revised Statutes, **add** 24-106-109
19 as follows:

20 **24-106-109. Terms and conditions in contracts.** ANY TERM OR
21 CONDITION IN ANY CONTRACT ENTERED INTO BY THE STATE THAT
22 REQUIRES THE STATE TO INDEMNIFY OR HOLD HARMLESS ANOTHER
23 PERSON, EXCEPT AS OTHERWISE AUTHORIZED BY LAW, OR BY WHICH THE
24 STATE AGREES TO BINDING ARBITRATION OR ANY OTHER BINDING
25 EXTRA-JUDICIAL DISPUTE RESOLUTION PROCESS IN WHICH THE FINAL
26 RESOLUTION IS NOT DETERMINED BY THE STATE, OR BY WHICH THE STATE
27 AGREES TO LIMIT LIABILITY OF ANOTHER PERSON FOR BODILY INJURY,

1 DEATH, OR DAMAGE TO TANGIBLE PROPERTY OF THE STATE CAUSED BY
2 THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH PERSON OR SUCH
3 PERSON'S EMPLOYEES OR AGENTS SHALL BE VOID AB INITIO; EXCEPT THAT
4 THE CONTRACT CONTAINING THAT TERM OR CONDITION SHALL OTHERWISE
5 BE ENFORCEABLE AS IF IT DID NOT CONTAIN SUCH TERM OR CONDITION.
6 ALL CONTRACTS ENTERED INTO BY THE STATE, EXCEPT FOR CONTRACTS
7 WITH ANOTHER GOVERNMENT, SHALL BE GOVERNED BY COLORADO LAW
8 NOTWITHSTANDING ANY TERM OR CONDITION TO THE CONTRARY.

9

10 **SECTION 40.** In Colorado Revised Statutes, **add** 24-109-101.1
11 as follows:

12 **24-109-101.1. Definitions.** AS USED IN THIS ARTICLE 109, UNLESS
13 THE CONTEXT OTHERWISE REQUIRES:

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

20 (2) "MATERIAL ISSUE" MEANS A NONTRIVIAL DEFECT IN THE
21 SOLICITATION OR AWARD THAT WOULD PREJUDICE THE OUTCOME OF THE
22 PROCUREMENT. THE PRESENCE OF MULTIPLE NONMATERIAL ISSUES IN A
23 SOLICITATION OR AWARD DOES NOT CONSTITUTE A MATERIAL ISSUE
24 UNLESS THE AGGRIEVED PARTY CAN ESTABLISH THAT THOSE
25 NONMATERIAL ISSUES TOGETHER WOULD PREJUDICE THE OUTCOME OF THE
26 PROCUREMENT.

27 **SECTION 41.** In Colorado Revised Statutes, **add with amended**

1 **and relocated provisions** 24-109-101.5 as follows:

2 **24-109-101.5. [Formerly 24-109-101] Resolution of**

3 **controversies.** (1) ~~The head of a purchasing agency~~ PROCUREMENT
4 OFFICIAL or ~~a~~ HIS OR HER designee is authorized to settle and resolve any
5 questions regarding:

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

7 (b) Debarment or suspension from consideration for award of
8 contracts; and

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

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

19 (3) EXCEPT FOR APPEALS REFERRED TO THE OFFICE OF
20 ADMINISTRATIVE COURTS PURSUANT TO SECTION 24-109-201, the
21 provisions of section 24-4-105 shall not apply to the administrative
22 procedures established pursuant to this ~~article~~ ARTICLE 109.

23 **SECTION 42.** In Colorado Revised Statutes, **amend** 24-109-102
24 as follows:

25 **24-109-102. Protested solicitations and awards.** (1) Any ~~actual~~
26 ~~or prospective bidder, offeror, or contractor who is aggrieved~~ PARTY in
27 connection with the solicitation or award of a contract may protest to the

1 ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER
2 designee. The protest OF AN INVITATION FOR BIDS OR A REQUEST FOR
3 PROPOSALS shall be submitted in writing TO THE PROCUREMENT OFFICIAL
4 OR HIS OR HER DESIGNEE within ~~seven working~~ TEN BUSINESS days after
5 such aggrieved ~~person~~ PARTY knows or should have known of the facts
6 giving rise thereto. THE PROTEST OF A SMALL PURCHASE SOLICITATION OR
7 AWARD OF CONTRACT SHALL BE SUBMITTED IN WRITING TO THE
8 PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE WITHIN THREE BUSINESS
9 DAYS, UNLESS THE PROCUREMENT OFFICIAL OTHERWISE EXTENDS THE
10 TIME PERIOD TO TEN BUSINESS DAYS, AFTER SUCH AGGRIEVED PARTY
11 KNOWS OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE THERETO.

12 (2) The ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or
13 a HIS OR HER designee shall have the authority to settle and resolve a
14 protest of an aggrieved ~~bidder, offeror, or contractor, actual or~~
15 ~~prospective~~, PARTY concerning the solicitation or award of a contract. A
16 written decision regarding the protest shall be rendered within ~~seven~~
17 ~~working~~ TEN BUSINESS days after the protest is filed. The decision shall
18 be based on and limited to a review of the MATERIAL issues raised by the
19 aggrieved ~~bidder, offeror, or contractor~~ PARTY and shall set forth each
20 factor taken into account in reaching the decision. This authority shall be
21 exercised pursuant to rules promulgated BY THE EXECUTIVE DIRECTOR to
22 provide for the expeditious resolution of the protest. REMEDIES AWARDED
23 PURSUANT TO THIS DECISION, IF ANY, SHALL BE LIMITED TO THOSE SET
24 FORTH IN PART 5 OF THIS ARTICLE 109.

25 (3) IF THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE DOES
26 NOT ISSUE A WRITTEN DECISION REGARDING A SOLICITATION OR AWARD
27 WITHIN THE PERIOD SPECIFIED IN THIS ARTICLE 109 OR WITHIN SUCH

1 LONGER PERIOD AS MAY BE AGREED UPON BY THE PROCUREMENT OFFICIAL
2 AND THE AGGRIEVED PARTY, THEN THE AGGRIEVED PARTY MAY PROCEED
3 AS IF THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE HAD
4 RENDERED AN ADVERSE DECISION.

5 **SECTION 43.** In Colorado Revised Statutes, **recreate and**
6 **reenact, with amendments,** 24-109-103 as follows:

7 **24-109-103. Stay of procurements.** A CONTRACT RESULTING
8 FROM A REQUEST FOR PROPOSALS IS NOT AWARDED UNTIL ANY PROTEST
9 MADE IN CONNECTION WITH THE REQUEST FOR PROPOSALS HAS BEEN
10 RESOLVED PURSUANT TO SECTION 24-109-102 (2).

11 **SECTION 44.** In Colorado Revised Statutes, 24-109-105, **amend**
12 (1)(a) and (1)(b) as follows:

13 **24-109-105. Debarment and suspension.** (1) (a) After
14 reasonable notice to the person involved and reasonable opportunity for
15 that person to be heard, the ~~head of a purchasing agency~~ PROCUREMENT
16 OFFICIAL or a HIS OR HER designee, after consultation with the using
17 agency and the attorney general, shall have authority to debar a person for
18 any of the reasons set forth in subsection (2) of this section from
19 consideration for award of contracts. The debarment shall not be for a
20 period of more than three years; EXCEPT THAT, IF A PERSON IS CONVICTED
21 OF A CRIME SPECIFIED IN SUBSECTION (2) OF THIS SECTION, THE LENGTH OF
22 THE DEBARMENT PERIOD MUST EQUAL THE LENGTH OF THE CONFINEMENT
23 SENTENCE INCLUDING THE PERIOD OF MANDATORY PAROLE IF IMPOSED OR
24 THE LENGTH OF THE PROBATION SENTENCE.

25 (b) The ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or
26 a HIS OR HER designee, after consultation with the using agency and the
27 attorney general, shall have authority to suspend a person from

1 consideration for award of contracts if there is probable cause to believe
2 that such person has engaged in activities that may lead to debarment. The
3 suspension shall not be for a period exceeding three months. However, if
4 a criminal charge has been issued for an offense that would be a cause for
5 debarment under subsection (2) of this section, the suspension shall, at the
6 request of the attorney general, remain in effect until after the trial of the
7 suspended person. If a person is suspended because a criminal charge has
8 been issued against an officer, director, partner, manager, key employee,
9 or other principal of the suspended person, the suspension may remain in
10 effect until after the trial of the officer, director, partner, manager, key
11 employee, or other principal or until after the charges against such officer,
12 director, partner, manager, key employee, or other principal have been
13 dismissed.

14 **SECTION 45.** In Colorado Revised Statutes, **amend** 24-109-106
15 as follows:

16 **24-109-106. Resolution of contract and breach of contract**
17 **controversies - applicability - authority.** (1) This section applies to
18 controversies between the state and a contractor which arise under, or by
19 virtue of, a contract between them, including, without limitation,
20 controversies which are based upon breach of contract, mistake,
21 misrepresentation, or any other cause for contract modification or
22 rescission.

23 (1.5) WHEN A CONTROVERSY CANNOT BE RESOLVED BY MUTUAL
24 AGREEMENT, THE AGGRIEVED PARTY MAY SUBMIT THE CONTROVERSY TO
25 THE PROCUREMENT OFFICIAL. THE PROCUREMENT OFFICIAL OR HIS OR HER
26 DESIGNEE SHALL, WITHIN TWENTY BUSINESS DAYS AFTER RECEIVING A
27 WRITTEN REQUEST BY THE AGGRIEVED PARTY FOR A FINAL DECISION, ISSUE

1 A WRITTEN DECISION.

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

8 **SECTION 46.** In Colorado Revised Statutes, **amend 24-109-107**
9 as follows:

10 **24-109-107. Issuance and appeal of decision.** (1) The ~~head of~~
11 ~~a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee
12 shall ~~promptly~~ issue a written decision WITHIN THE PERIODS SPECIFIED IN
13 THIS ARTICLE 109 regarding any protest, debarment or suspension, or
14 contract controversy if it is not settled by mutual agreement. The decision
15 shall state the reasons for the action taken and give notice to the ~~protestor,~~
16 ~~prospective contractor, or contractor~~ AGGRIEVED PARTY of his or her right
17 to administrative REVIEW OF ANY MATERIAL ISSUE and judicial ~~reviews~~
18 REVIEW as provided for in this ~~article~~ ARTICLE 109.

19 (2) A decision shall be effective unless ~~stayed or until~~ reversed on
20 appeal. A copy of the decision rendered under subsection (1) of this
21 section shall be mailed or otherwise furnished immediately to the
22 ~~protestor, prospective contractor, or contractor~~ AGGRIEVED PARTY. The
23 decision shall be final and conclusive unless the ~~protestor, prospective~~
24 ~~contractor, or contractor~~ AGGRIEVED PARTY appeals the decision to the
25 executive director or commences an action in court pursuant to this
26 ~~article.~~ Any ARTICLE 109. EXCEPT FOR APPEALS REFERRED TO THE OFFICE
27 OF ADMINISTRATIVE COURTS PURSUANT TO SECTION 24-109-201, AN

1 appeal from a decision under this section shall not be subject to the
2 provisions of section 24-4-105.

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

10 **SECTION 47.** In Colorado Revised Statutes, **add** 24-109-108 as
11 follows:

12 **24-109-108. Computation of time.** FOR THE PURPOSES OF THIS
13 ARTICLE 109, IN COMPUTING TIME FOR A PERIOD OF DAYS, THE FIRST
14 BUSINESS DAY IS EXCLUDED AND THE LAST BUSINESS DAY IS INCLUDED.

15 **SECTION 48.** In Colorado Revised Statutes, **amend** part 2 of
16 article 109 of title 24 as follows:

17 PART 2

18 APPEALS

19 **24-109-201. Appeal to the executive director - stay of**
20 **procurements.** (1) Unless an action has been initiated previously in the
21 district court of the city and county of Denver pursuant to this ~~article~~
22 ARTICLE 109, the executive director shall have the authority to review and
23 determine ~~de novo~~ any appeal by an aggrieved ~~person~~ PARTY from a
24 decision of the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or
25 a HIS OR HER designee rendered pursuant to section 24-109-107. The
26 executive director is authorized to designate another person to exercise
27 his or her powers pursuant to this part 2. THE EXECUTIVE DIRECTOR OR HIS

1 OR HER DESIGNEE MAY REFER AN APPEAL TO THE OFFICE OF
2 ADMINISTRATIVE COURTS TO REVIEW AND DETERMINE ANY APPEAL
3 PURSUANT TO SECTION 24-30-1001. IF THE AGGRIEVED PARTY FILES AN
4 ACTION WITH THE DISTRICT COURT OF THE CITY AND COUNTY OF DENVER
5 PURSUANT TO SECTION 24-109-205 AT ANY TIME DURING THE REVIEW BY
6 THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE, THE AUTHORITY OF
7 THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE IS
8 TERMINATED.

9 (2) A CONTRACT FOR A TOTAL VALUE OF ONE MILLION FIVE
10 HUNDRED THOUSAND DOLLARS OR MORE RESULTING FROM A REQUEST FOR
11 PROPOSALS IS NOT AWARDED UNTIL ANY APPEAL MADE IN CONNECTION
12 WITH THE REQUEST FOR PROPOSALS HAS BEEN RESOLVED PURSUANT TO
13 THIS PART 2; EXCEPT THAT THE EXECUTIVE DIRECTOR OR THE EXECUTIVE
14 DIRECTOR'S DESIGNEE MAY OVERRIDE THE STAY IF HE OR SHE DETERMINES
15 THAT SUCH OVERRIDE IS IN THE BEST INTEREST OF THE STATE.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27



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

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

24-109-204. Decisions of the executive director. (1) On each appeal submitted, the executive director or ~~the executive director's~~ HIS OR HER designee shall promptly decide the contract controversy, debarment, or suspension or whether the solicitation or award was in accordance with the procedures provided in this code, regulations enacted pursuant to this code, and the terms and conditions of the solicitation. The decision shall be in writing. A copy of any decision shall be provided to ~~all parties~~ THE AGGRIEVED PARTY AND THE PROCUREMENT OFFICIAL OF THE USING AGENCY.

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

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

1 and

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

5 (3) IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE
6 DETERMINES THAT THE SOLICITATION OR AWARD WAS NOT IN
7 ACCORDANCE WITH THIS CODE, REMEDIES AWARDED IN THE DECISION, IF
8 ANY, SHALL BE LIMITED TO THOSE SET FORTH IN PART 5 OF THIS ARTICLE
9 109.

10 **24-109-205. Appeals to district court.** An appeal of a decision
11 ~~by~~ OF the executive director or a HIS OR HER designee rendered pursuant
12 to section 24-109-201 or by the ~~head of a purchasing agency~~
13 PROCUREMENT OFFICIAL or a HIS OR HER designee rendered pursuant to
14 section 24-109-107 shall be filed with the district court for the city and
15 county of Denver, which shall have exclusive jurisdiction to hear such
16 appeals. ~~Any judicial action under this part 2 shall be de novo, and The~~
17 provisions of section 24-4-106 shall not apply TO ANY APPEAL TO THE
18 DISTRICT COURT UNDER THIS PART 2.

19 **24-109-206. Time limitations on appeals to the district court.**

20 (1) A judicial review of a decision of the executive director or a HIS OR
21 HER designee or of the ~~head of a purchasing agency~~ PROCUREMENT
22 OFFICIAL or a HIS OR HER designee shall be initiated within the following
23 time periods:

24 (a) In the case of an action between the state and a ~~bidder, offeror,~~
25 ~~or contractor, prospective or actual, who is~~ AN aggrieved PARTY
26 AGGRIEVED in connection with the solicitation or award of a contract,
27 within ten ~~working~~ BUSINESS days after ~~receipt~~ of the decision IS

1 RENDERED;

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

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

7 **SECTION 49.** In Colorado Revised Statutes, **amend** 24-109-301
8 as follows:

9 **24-109-301. Interest.** EXCEPT FOR INTEREST PAYABLE ON
10 LIABILITY INCURRED BY THE STATE UNDER SECTION 24-30-202 (24),
11 interest on amounts determined to be due to a contractor or to the state
12 UNDER THIS CODE shall ~~be payable~~ ACCRUE from the date the ~~payment~~
13 ~~was due in accordance with the terms of the contract or the claim was~~
14 ~~filed, whichever is earlier, through the date of decision or judgment,~~
15 ~~whichever is later~~ CONTROVERSY WAS SUBMITTED PURSUANT TO SECTION
16 24-109-106 THROUGH THE FINAL RESOLUTION OF THE CONTROVERSY BY
17 THE PROCUREMENT OFFICIAL OR UPON FINAL DETERMINATION OF THE
18 EXECUTIVE DIRECTOR OR ADJUDICATION OF THE DENVER DISTRICT COURT,
19 WHICHEVER OCCURS LAST. Interest shall be calculated ~~at eleven percent~~
20 ~~per annum~~ AT THE AMOUNT DUE AT THE RATE SET FORTH IN THE
21 CONTRACT OR AT THE RATE OF ONE PERCENT PER MONTH, WHICHEVER IS
22 GREATER, UNTIL THE AMOUNT IS PAID IN FULL.

23 **SECTION 50.** In Colorado Revised Statutes, **amend** 24-109-404
24 as follows:

25 **24-109-404. Liability of public employees.** If any governmental
26 body purchases any supplies, services, or construction contrary to the
27 provisions of this code or the rules promulgated pursuant thereto, the head

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

8 **SECTION 51.** In Colorado Revised Statutes, **add** part 5 to article
9 109 of title 24 as follows:

10 PART 5

11 REMEDIES

12 **24-109-501. Applicability.** THE REMEDIES SET FORTH IN THIS
13 PART 5 SHALL BE THE EXCLUSIVE REMEDIES AVAILABLE TO AN AGGRIEVED
14 PARTY UPON A JUDICIAL OR ADMINISTRATIVE DETERMINATION THAT A
15 SOLICITATION OR AWARD OF A CONTRACT WAS IN VIOLATION OF THIS
16 CODE. FOR THE PURPOSES OF THIS PART 5, A VIOLATION OF THE CODE
17 SHALL NOT INCLUDE ADMINISTRATIVE OR CLERICAL DEFECTS THAT ARE
18 NOT MATERIAL TO THE SOLICITATION OR AWARD OF A CONTRACT OR THAT
19 CAN BE CORRECTED BY THE GOVERNMENTAL BODY. **ANY RELIEF NOT**
20 **EXPRESSLY PROVIDED FOR IN THIS PART 5 IS PROHIBITED.**

21 **24-109-502. Protests - remedies prior to an award.** IF, PRIOR TO
22 THE AWARDING OF A CONTRACT, THE PROCUREMENT OFFICIAL
23 DETERMINES THAT A SOLICITATION OR THE PROPOSED AWARD IS IN
24 VIOLATION OF THIS CODE, THE SOLICITATION OR PROPOSED AWARD SHALL
25 BE CANCELED OR REVISED TO COMPLY WITH THIS CODE, AT THE DIRECTION
26 OF THE PROCUREMENT OFFICIAL. THE DETERMINATION OF THE
27 PROCUREMENT OFFICIAL UNDER THIS SECTION SHALL NOT BE SUBJECT TO

1 FURTHER ADMINISTRATIVE OR JUDICIAL REVIEW.

2 **24-109-503. Protest - remedies following an award -**
3 **ratification by chief procurement officer.** IF THE PROCUREMENT
4 OFFICIAL DETERMINES THAT THE SOLICITATION OR AWARD IS IN VIOLATION
5 OF THIS CODE, THE PROCUREMENT OFFICIAL MAY CANCEL OR TERMINATE
6 SUCH SOLICITATION OR AWARD, DIRECT THE GOVERNMENTAL BODY TO
7 MODIFY SUCH SOLICITATION OR AWARD TO ELIMINATE THE VIOLATIONS,
8 OR IF THE PROCUREMENT OFFICIAL DETERMINES THAT THE SOLICITATION
9 OR AWARD IS IN THE BEST INTERESTS OF THE STATE, THE PROCUREMENT
10 OFFICIAL MAY SUBMIT THE RECOMMENDATION TO RATIFY THE
11 SOLICITATION OR AWARD TO THE EXECUTIVE DIRECTOR OR THE CHIEF
12 PROCUREMENT OFFICER OR A DESIGNEE OF EITHER OFFICER. IF THE
13 EXECUTIVE DIRECTOR OR CHIEF PROCUREMENT OFFICER OR A DESIGNEE OF
14 EITHER OFFICER ELECTS TO RATIFY THE SOLICITATION OR AWARD, THE
15 AGGRIEVED PARTY WHO SHOULD HAVE BEEN AWARDED THE CONTRACT
16 UNDER THE SOLICITATION, BUT WAS NOT, SHALL BE ENTITLED TO COSTS AS
17 SET FORTH IN SECTION 24-109-505. THE ACCEPTANCE OF COSTS BY THE
18 AGGRIEVED PARTY CONSTITUTES A WAIVER OF THE RIGHT TO APPEAL THE
19 DETERMINATION OF THE EXECUTIVE DIRECTOR OR THE CHIEF
20 PROCUREMENT OFFICER OR A DESIGNEE OF EITHER OFFICER.

21 **24-109-504. Appeals - remedies following an award.** (1) IF THE
22 EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE DETERMINES THAT THE
23 SOLICITATION OR AWARD IS IN VIOLATION OF THIS CODE IN ANY MATERIAL
24 RESPECT, THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE MAY CANCEL
25 OR TERMINATE SUCH SOLICITATION OR AWARD, DIRECT THE PURCHASING
26 AGENCY TO MODIFY SUCH SOLICITATION OR AWARD TO ELIMINATE ANY
27 VIOLATIONS, OR IF THE PROCUREMENT OFFICIAL DETERMINES THAT THE

1 SOLICITATION OR AWARD IS IN THE BEST INTERESTS OF THE STATE, THE
2 PROCUREMENT OFFICIAL MAY SUBMIT THE RECOMMENDATION TO RATIFY
3 THE SOLICITATION OR AWARD TO THE EXECUTIVE DIRECTOR OR HIS OR HER
4 DESIGNEE. IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE ELECTS
5 TO RATIFY THE SOLICITATION OR AWARD, THE AGGRIEVED PARTY WHO
6 SHOULD HAVE BEEN AWARDED THE CONTRACT UNDER THE SOLICITATION,
7 BUT WAS NOT, SHALL BE ENTITLED TO COSTS AS SET FORTH IN SECTION
8 24-109-505.

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

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

26 **24-109-505. Costs.** WHEN A PROTEST IS SUSTAINED BY THE
27 PROCUREMENT OFFICIAL OR UPON ADMINISTRATIVE OR JUDICIAL REVIEW

1 AND THE AGGRIEVED PARTY SHOULD HAVE BEEN, BUT WAS NOT, AWARDED
2 THE CONTRACT UNDER THE SOLICITATION, THE AGGRIEVED PARTY SHALL
3 BE ENTITLED TO ONLY THE REASONABLE COSTS INCURRED IN CONNECTION
4 WITH THE SOLICITATION, INCLUDING BID PREPARATION COSTS.
5 REASONABLE COSTS SHALL NOT INCLUDE ATTORNEY FEES. NO OTHER
6 COSTS SHALL BE PERMITTED. THESE COSTS SHALL BE PAID FROM FUNDS
7 APPROPRIATED OR OTHERWISE MADE AVAILABLE TO THE USING AGENCY
8 THAT IS DETERMINED TO BE RESPONSIBLE FOR THE VIOLATION OF THE
9 CODE. SUCH DETERMINATION SHALL BE MADE BY THE PROCUREMENT
10 OFFICIAL IN CONNECTION WITH A PROTEST AND BY THE EXECUTIVE
11 DIRECTOR IN CONNECTION WITH AN APPEAL.

12 **SECTION 52.** In Colorado Revised Statutes, **amend 24-110-201**
13 as follows:

14 **24-110-201. Cooperative purchasing authorized.** (1) IN
15 ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE 110 AND RULES
16 PROMULGATED BY THE EXECUTIVE DIRECTOR, any public procurement unit
17 may either participate in, sponsor, conduct, or administer a cooperative
18 purchasing agreement for the procurement of any supplies, services, or
19 construction with one or more public procurement units, external
20 procurement ~~activities~~ UNITS, or procurement consortiums that include as
21 members tax-exempt organizations as defined by section 501 (c)(3) of the
22 federal "Internal Revenue Code of 1986", as amended, in accordance with
23 an agreement entered into between the participants. Such cooperative
24 purchasing may include, but is not limited to, joint or multiparty contracts
25 between public procurement units and open-ended state public
26 procurement unit contracts that are made available to local public
27 procurement units.

1 (1.5) WITH PRIOR WRITTEN APPROVAL OF THE CHIEF
2 PROCUREMENT OFFICER AND UNDER PROCEDURES ESTABLISHED BY RULE,
3 A STATE PUBLIC PROCUREMENT UNIT MAY SPONSOR, CONDUCT, OR
4 ADMINISTER A COOPERATIVE PURCHASING AGREEMENT WITH ONE OR MORE
5 PUBLIC PROCUREMENT UNITS, EXTERNAL PROCUREMENT UNITS, OR
6 PROCUREMENT CONSORTIUMS.

7 (2) With prior written approval of the ~~executive director~~ CHIEF
8 PROCUREMENT OFFICER and under procedures established by rule, a state
9 public procurement unit may purchase goods or services under the terms
10 of a contract between a vendor and an external procurement ~~activity~~ UNIT
11 or a local public procurement unit without complying with the
12 requirements of section 24-102-202.5 and article 103 of this ~~title~~ TITLE
13 24.

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

20 (4) UNLESS OTHERWISE APPROVED BY THE CHIEF PROCUREMENT
21 OFFICER, THE PROCUREMENT OFFICIAL SHALL COMPLY WITH THE
22 FOLLOWING ORDER OF PRIORITY FOR THE USE OF COOPERATIVE
23 PURCHASING AGREEMENTS:

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

25 (b) SECOND, STATE PUBLIC PROCUREMENT UNIT COOPERATIVE
26 PURCHASING AGREEMENTS; AND

27 (c) THIRD, PUBLIC PROCUREMENT UNIT OR EXTERNAL PUBLIC

1 PROCUREMENT UNIT COOPERATIVE PURCHASING AGREEMENTS.

2 (5) A LOCAL PUBLIC PROCUREMENT UNIT MAY PARTICIPATE IN,
3 SPONSOR, CONDUCT, OR ADMINISTER A COOPERATIVE PURCHASING
4 AGREEMENT FOR THE PROCUREMENT OF ANY SUPPLIES OR SERVICES AS
5 PERMITTED BY THE PROCUREMENT CODE, ORDINANCES, AND RULES OF
6 SUCH LOCAL PUBLIC PROCUREMENT UNIT.

7 **SECTION 53.** In Colorado Revised Statutes, **amend** 24-110-202
8 as follows:

9 **24-110-202. Sale, acquisition, or use of supplies by a public**
10 **procurement unit.** Any public procurement unit may sell to, acquire
11 from, or use any supplies belonging to another public procurement unit
12 or external procurement ~~activity~~ UNIT independent of the requirements of
13 article 103 of this ~~title~~ TITLE 24.

14 **SECTION 54.** In Colorado Revised Statutes, **amend** 24-110-203
15 as follows:

16 **24-110-203. Cooperative use of supplies or services.** Any public
17 procurement unit may enter into an agreement, independent of the
18 requirements of article 103 of this ~~title~~ TITLE 24, with any other public
19 procurement unit or external procurement ~~activity~~ UNIT for the
20 cooperative use of supplies or services under the terms agreed upon
21 between the parties.

22 **SECTION 55.** In Colorado Revised Statutes, **amend** 24-110-204
23 as follows:

24 **24-110-204. Joint use of facilities.** Any public procurement unit
25 may enter into agreements for the common use or lease of warehousing
26 facilities, capital equipment, and other facilities with another public
27 procurement unit or an external procurement ~~activity~~ UNIT under the

1 terms agreed upon between the parties.

2 **SECTION 56.** In Colorado Revised Statutes, 24-110-205, **amend**
3 (1), (2), (3) introductory portion, and (4) introductory portion as follows:

4 **24-110-205. Supply of personnel, information, and technical**
5 **services.** (1) Any public procurement unit is authorized, in its discretion,
6 upon written request from another public procurement unit or external
7 procurement ~~activity~~ UNIT, to provide personnel to the requesting public
8 procurement unit or external procurement ~~activity~~ UNIT.

9 (2) Informational, technical, and other services of any public
10 procurement unit may be made available to any other public procurement
11 unit or external procurement ~~activity~~ UNIT if the requirements of the
12 public procurement unit tendering the services shall have precedence over
13 the requesting public procurement unit or external procurement ~~activity~~
14 UNIT. The requesting public procurement unit or external procurement
15 ~~activity~~ UNIT shall pay any expenses incurred in providing such services,
16 in accordance with the agreement between the parties.

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

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

25 **SECTION 57.** In Colorado Revised Statutes, **amend** 24-110-206
26 as follows:

27 **24-110-206. Use of payments received by a supplying public**

1 **procurement unit.** All payments from any public procurement unit or
2 external procurement activity which UNIT THAT are received by a public
3 procurement unit for supplying personnel or services shall be available
4 for use as authorized by law or pursuant to fiscal rules.

5 **SECTION 58.** In Colorado Revised Statutes, **amend** 24-110-207
6 as follows:

7 **24-110-207. Public procurement units - compliance with code.**

8 Whenever the public procurement unit or external procurement activity
9 which UNIT THAT is administering a cooperative purchase PURCHASING
10 agreement complies with the requirements of this code, the public
11 procurement unit which THAT is participating in such agreement shall also
12 be deemed to have complied with this code. No public procurement unit
13 may enter into a cooperative purchasing agreement for the purpose of
14 circumventing this code.

15 **SECTION 59.** In Colorado Revised Statutes, 24-110-207.5,
16 **amend** (2) as follows:

17 **24-110-207.5. Certification of certain entities as local public**
18 **procurement units - rules - report.** (2) The executive director shall
19 MAY adopt such rules as are necessary to implement the certification
20 process required by this section.

21 **SECTION 60.** In Colorado Revised Statutes, 8-17-101, **amend**
22 (2) introductory portion and (2)(b) as follows:

23 **8-17-101. Colorado labor employed on public works.** (2) As
24 used in this article ARTICLE 17:

25 (b) "Public works project" shall have HAS the same meaning as
26 "public project" as defined in section 8-19-102 (2) SECTION 24-103-908
27 (1).

1 **SECTION 61.** In Colorado Revised Statutes, 17-24-106.6,
2 **amend** (2)(a) as follows:

3 **17-24-106.6. Surplus state property.** (2) The director shall
4 promulgate rules to be utilized by the division in governing:

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

8 **SECTION 62.** In Colorado Revised Statutes, 17-24-111, **amend**
9 (1)(a) and (6)(a) as follows:

10 **17-24-111. Purchasing requirement.** (1) (a) The director is
11 hereby authorized to develop programs that produce goods and services,
12 including capital construction items, which are used by agencies financed
13 in whole or in part by the state, any political subdivision thereof, or the
14 federal government and to develop programs that produce goods,
15 including capital construction items, which are used by public entities
16 involved in lease-purchase agreements as provided in section 17-24-106
17 (1)(f)(II). The director shall also develop programs to market goods and
18 services to distributor networks, nonprofit organizations, private sector
19 retailers, and the general public. The state and its institutions, agencies,
20 and departments may purchase through the department of personnel or
21 purchasing agency authorized by section 24-102-302 (2), ~~C.R.S.~~, such
22 goods and services as are produced by the division, unless similar goods
23 and services can be obtained at or below the amount established for small
24 purchases which are exempt from the ~~competitive sealed bidding~~
25 INVITATION FOR BIDS requirements of the "Procurement Code" contained
26 in part 2 of article 103 of title 24. ~~C.R.S.~~ Goods and services produced by
27 the division shall be provided at a price comparable to the current market

1 price for similar goods and services. State agencies may purchase goods
2 and services from sources other than the division; except that office
3 furniture and office systems shall be purchased from the division. Printing
4 services shall be purchased from the division unless a state agency
5 operates its own printing operation. If the division is not able to provide
6 its goods or services at a price or level of quality which is comparable to
7 that provided by the private sector or provide them in a timely manner,
8 which price, level of quality, or timeliness is determined by the
9 department of personnel, the department of personnel shall make a
10 certification to that effect, and the state agency purchasing such goods or
11 services shall not be required to purchase them from the division.

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

24 **SECTION 63.** In Colorado Revised Statutes, **amend 23-5-132** as
25 follows:

26 **23-5-132. Governing boards - travel policies - exemption from**
27 **state travel rules.** Each governing board shall adopt travel policies for

1 the institutions of higher education under its control, including but not
2 limited to the use of travel services or travel agencies by the employees
3 of the governing board or said institutions. Any rules adopted by the state
4 controller pursuant to section 24-30-202 (26), ~~C.R.S.~~, or by the executive
5 director of the department of personnel pursuant to ~~section 24-102-401,~~
6 ~~C.R.S.~~, SECTION 24-102-202, that impose restrictions or requirements
7 pertaining to the use of travel services or travel agencies shall not apply
8 to a governing board or state institution of higher education.

9 **SECTION 64.** In Colorado Revised Statutes, 24-30-202, **amend**
10 (24)(b) as follows:

11 **24-30-202. Procedures - vouchers, warrants, and checks -**
12 **rules - penalties - definitions.** (24) (b) As used in ~~paragraph (a) of this~~
13 ~~subsection (24)~~ SUBSECTION (24)(a) OF THIS SECTION, "liability incurred
14 on behalf of the state" means the receipt of supplies, as defined in ~~section~~
15 ~~24-101-301 (22)~~ SECTION 24-101-301 (47), or services, as defined in
16 ~~section 24-101-301 (20)~~ SECTION 24-101-301 (42), and receipt of a
17 correct notice of the amount due, by the state agency procuring such
18 supplies or services from a nongovernmental entity. No liability is
19 incurred on behalf of the state if a good faith dispute exists as to the
20 state's obligation to pay all or a portion of the account. Nothing in this
21 subsection (24) shall be construed to affect any provision for the time of
22 payment in a written contract between a state agency procuring services
23 or supplies and a nongovernmental entity.

24 **SECTION 65.** In Colorado Revised Statutes, 24-30-1505, **amend**
25 (2) as follows:

26 **24-30-1505. Powers of the executive director.** (2) The executive
27 director shall determine the need, if any, for procuring commercial

1 insurance to protect the state against liability and the specifications for
2 such insurance. The acquisition of any insurance shall be pursuant to the
3 state "Procurement Code", articles 101 to 112 of this ~~title~~ TITLE 24. In the
4 event that no responsible ~~competitive sealed bids~~ RESPONSES TO AN
5 INVITATION FOR BIDS are received, the executive director may negotiate
6 with any agent, broker, or insurance company to secure the required
7 coverage or necessary coverage. Such negotiated policy or policies shall
8 be subject to the approval of the board.

9 **SECTION 66.** In Colorado Revised Statutes, 24-37-403, **amend**
10 (3) introductory portion as follows:

11 **24-37-403. Establishment of state pay for success contracts**
12 **program - pay for success contracts fund - creation.** (3) The office, or
13 the office and one or more local governments as authorized by subsection
14 (4) of this section, may enter into a contract with a lead contractor for the
15 provision of program-eligible interventions. Entry into such a contract is
16 generally subject to the requirements of the "Procurement Code", articles
17 101 to 112 of this ~~title~~ TITLE 24, and the office is encouraged, but not
18 required, to use the ~~competitive sealed~~ REQUEST FOR proposals process
19 specified in section 24-103-203. When developing and reviewing the
20 terms of a pay for success contract, the office may consult with the state
21 treasurer on financial terms and with experts to provide advice regarding
22 definition of appropriate performance targets. A contract shall not require
23 or authorize the state to use federal moneys to make success payments
24 unless federal law or federal regulations authorize the use of federal
25 moneys for that purpose. Before it enters into a contract, the office shall
26 make the contract available to the public on the office's website and
27 provide an opportunity for public comment regarding the contract. Prior

1 to entering into the terms of a contract, a contract must:

2 **SECTION 67.** In Colorado Revised Statutes, 24-91-103.6,
3 **amend** (2)(b), (2)(c), and (4) as follows:

4 **24-91-103.6. Public entity - contracts - appropriations -**
5 **contract modifications - severability - definition.** (2) Every public
6 works contract, as defined in section 24-91-103.5 (1)(b), shall contain the
7 following:

8 (b) A clause that prohibits the issuance of any ~~change order, as~~
9 ~~defined in section 24-101-301(2)~~ CONTRACT MODIFICATION, AS DEFINED
10 IN SECTION 24-101-301 (10), or other form of ~~order~~ MODIFICATION or
11 directive by the public entity requiring additional compensable work to
12 be performed, which work causes the aggregate amount payable under the
13 contract to exceed the amount appropriated for the original contract,
14 unless the contractor is given written assurance by the public entity that
15 lawful appropriations to cover the costs of the additional work have been
16 made and the appropriations are available prior to performance of the
17 additional work or unless such work is covered under a remedy-granting
18 provision in the contract; and

19 (c) For any form of ~~order~~ MODIFICATION or directive by the public
20 entity requiring additional compensable work to be performed, a clause
21 that requires the public entity to reimburse the contractor for the
22 contractor's costs on a periodic basis, as those terms are defined in the
23 contract, for all additional directed work performed until a ~~change order~~
24 CONTRACT MODIFICATION is finalized. In no instance shall the periodic
25 reimbursement be required before the contractor has submitted an
26 estimate of cost to the public entity for the additional compensable work
27 to be performed. Notwithstanding the provisions of this ~~paragraph (c)~~

1 SUBSECTION (2)(c), state public works contracts shall be subject to the
2 provisions of section 24-30-202.

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

22 **SECTION 68.** In Colorado Revised Statutes, 24-92-103, **amend**
23 (1) as follows:

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

1 **SECTION 69.** In Colorado Revised Statutes, 24-92-103.5,
2 **amend** (5) as follows:

3 **24-92-103.5. Construction of public projects - invitation for**
4 **best value bids.** (5) ~~A request for competitive sealed best value bids~~ AN
5 INVITATION FOR BEST VALUE BIDS issued pursuant to this section must
6 otherwise comply with the requirements of section 24-103-203
7 concerning ~~competitive sealed~~ REQUESTS FOR proposals for
8 nonconstruction contracts to the extent that such requirements do not
9 conflict with this section. In the case of a conflict, the provisions of this
10 section supersede.

11 **SECTION 70.** In Colorado Revised Statutes, **amend** 24-92-103.7
12 as follows:

13 **24-92-103.7. Disclosure - invitation for bids - invitation for**
14 **best value bids.** The executive director of an agency of government or
15 president of an institution of higher education that enters into a
16 construction contract for a public project pursuant to this ~~article~~ ARTICLE
17 92 that is not funded in any part with federal moneys shall disclose to the
18 public the agency of government's rationale or the institution's rationale
19 for selecting the ~~competitive sealed bidding~~ INVITATION FOR BIDS process
20 pursuant to section 24-92-103 or the ~~competitive sealed best value~~
21 ~~bidding~~ INVITATION FOR BEST VALUE BIDS process pursuant to section
22 24-92-103.5 for the public project. The agency or institution shall post the
23 disclosure on its website.

24 **SECTION 71.** In Colorado Revised Statutes, **amend** 24-92-110
25 as follows:

26 **24-92-110. Rules and regulations.** The executive director of the
27 department of personnel shall promulgate rules and regulations which are

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

13 **SECTION 72.** In Colorado Revised Statutes, 30-20-1406, **amend**
14 (2)(f)(III) introductory portion as follows:

15 **30-20-1406. Waste tire market development fund - creation -**
16 **incentive programs - legislative declaration - repeal.** (2) The
17 department shall use the fund:

18 (f) (III) For the purpose of expending tire reuse or recycling
19 incentives under this ~~paragraph (f)~~ SUBSECTION (2)(f)(III), the ~~state~~
20 ~~purchasing director and any purchasing agent~~ PROCUREMENT OFFICIAL OR
21 HIS OR HER DESIGNEE have the authority to purchase tire-derived products
22 unless any of the following conditions exist:

23 **SECTION 73.** In Colorado Revised Statutes, 43-1-113, **amend**
24 (16)(a) as follows:

25 **43-1-113. Funds - budgets - fiscal year - reports and**
26 **publications - repeal.** (16) (a) If there are fewer than three bidders on a
27 design bid build highway project, no award shall be made if the award is

1 more than ten percent over the estimate of the department of
2 transportation on the project; except that, if the estimate of the department
3 on the project is less than one million dollars and there are fewer than
4 three bidders, the executive director may make an award of more than ten
5 percent, but less than twenty-five percent, over the estimate of the
6 department to the low responsible bidder, as defined in ~~section~~
7 ~~24-103-101 (3), C.R.S.~~ SECTION 24-101-301 (24).

8 **SECTION 74.** In Colorado Revised Statutes, 43-1-1202, **amend**
9 (1)(b) as follows:

10 **43-1-1202. Department powers.** (1) Notwithstanding any other
11 law, the department may:

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

14 **SECTION 75.** In Colorado Revised Statutes, 43-1-1406, **amend**
15 (2) as follows:

16 **43-1-1406. General procedures.** (2) Except as provided in this
17 subsection (2), the department shall allow the preference to Colorado
18 residents provided in ~~section 8-19-101, C.R.S.~~, SECTION 24-103-908 in
19 awarding an adjusted score design-build contract pursuant to this part 14.
20 In evaluating and selecting a proposal for a design-build contract under
21 this part 14, the department shall assign greater value to a proposal in
22 proportion to the extent such proposal commits to using Colorado
23 residents to perform work on the transportation project. If, however, the
24 department determines that compliance with this subsection (2) may
25 cause the denial of federal moneys that would otherwise be available for
26 the transportation project or if such compliance would otherwise be
27 inconsistent with the requirements of federal law, the department shall

1 suspend the preference granted under this subsection (2) only to the
2 extent necessary to prevent denial of federal moneys or to eliminate the
3 inconsistency with federal law.

4 **SECTION 76. Repeal of provisions being relocated in this act.**

5 In Colorado Revised Statutes, **repeal** 8-18-101, 8-18-103, 8-19-101,
6 8-19-102, 8-19-104, 8-19-105, 8-19.5-101, 24-101-103, 24-102-204,
7 24-102-205, 24-102-401, 24-103-101, 24-103-202.5, 24-103-207,
8 24-103-207.5, 24-103-209, 24-103-210, 24-103-211, 24-103-501,
9 24-103-503, 24-103-601, 24-103.5-101, 24-104-101, 24-107-101,
10 24-109-101, and 24-110-101 (1) to (5).

11 **SECTION 77.** In Colorado Revised Statutes, **repeal** 24-103-404,
12 24-103-502, 24-103-807, 24-105-102, 24-109-104, 24-109-401,
13 24-109-402, 24-109-403, and 24-111-103.

14 **SECTION 78. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly (August
17 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within such period, then the act, item, section, or part will not take effect
21 unless approved by the people at the general election to be held in
22 November 2018 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.