

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 28, 2017
Date

Committee on Business Affairs and Labor.

After consideration on the merits, the Committee recommends the following:

HB17-1051 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, page 4, line 12, strike "OR AGREEMENT".
- 2 Page 5, line 25, strike "PUBLICLY REGULATED UTILITIES" and substitute
3 "UTILITIES,".
- 4 Page 6, strike line 11 and substitute:
5 "(XVI) REAL PROPERTY OR INTEREST IN REAL PROPERTY; AND".
- 6 Page 6, line 15, strike "AGENT OF A GOVERNMENTAL BODY" and substitute
7 "OFFICIAL OR HIS OR HER DESIGNEE".
- 8 Page 6, strike lines 19 and 20 and substitute "OFFICIAL OR HIS OR HER
9 DESIGNEE MAY REQUIRE A COMPETITIVE PROCESS."
- 10 Page 7, strike lines 1 through 9 and substitute:
11 "~~(d) Except as provided in section 24-111-103, this code shall also~~
12 ~~apply to contracts funded in whole or in part with federal assistance~~
13 ~~moneys. This code shall apply to the transfer or disposal of state~~
14 ~~supplies."~~
- 15 Page 9, strike lines 14 through 21.

- 1 Renumber succeeding subsections accordingly.
- 2 Page 9, line 27, strike "24-30-202 (2)." and substitute "24-30-202."
- 3 Page 10, line 1, strike "ENTITY" and substitute "PERSON".
- 4 Page 10, strike lines 24 and 25 and substitute "of what it may be called,
5 ~~for the procurement or disposal of supplies, services, or construction~~
6 BETWEEN A GOVERNMENTAL BODY AND A CONTRACTOR, WHERE THE
7 PRINCIPAL PURPOSE IS TO ACQUIRE SUPPLIES, SERVICES, OR CONSTRUCTION
8 OR TO DISPOSE OF SUPPLIES FOR THE DIRECT BENEFIT OF A GOVERNMENTAL
9 BODY. "CONTRACT" INCLUDES COMMITMENT VOUCHERS".
- 10 Page 11, strike lines 2 and 3 and substitute "~~price, quantity, or other~~
11 ~~provision of a contract accomplished by mutual action of the parties to the~~
12 IN ACCORDANCE WITH THE TERMS OF THAT contract."
- 13 Page 12, strike lines 20 through 26 and substitute:
- 14 ~~"(10.5) (a) (19) "Grant" means the furnishing of assistance,~~
15 ~~including financial or other means of assistance, by the purchasing agency~~
16 ~~to any person to support a program authorized by law~~ AN AGREEMENT IN
17 WHICH A GOVERNMENTAL BODY AS GRANTOR TRANSFERS ANYTHING OF
18 VALUE TO A GRANTEE TO CARRY OUT A PUBLIC PURPOSE OF SUPPORT OR
19 STIMULATION AUTHORIZED BY LAW INSTEAD OF ACQUIRING PROPERTY OR
20 SERVICES FOR THE DIRECT BENEFIT OR USE OF THAT GOVERNMENTAL
21 BODY. A GRANT MAY INCLUDE A DISTRIBUTION OF FUNDS."
- 22 Page 13, line 17, strike "INCLUDES THE FIRST DAY OF JANUARY,".
- 23 Page 13, strike lines 18 through 27 and substitute "SHALL HAVE THE SAME
24 MEANING AS DEFINED IN SECTION 24-11-101 (1)."
- 25 Page 14, line 19, strike "ENTITY" and substitute "PERSON".
- 26 Page 14, line 22, after "organization," insert "JOINT VENTURE,".
- 27 Page 15, line 9, strike "PRIMARY".
- 28 Page 15, lines 11 and 12, strike "PRINCIPAL REPRESENTATIVE" and
29 substitute "INDIVIDUAL".

- 1 Page 15, line 13, strike "PART 13 OF".
- 2 Page 15, line 14, strike "ARTICLE 30 OF THIS TITLE 24." and substitute
3 "SECTION 24-30-1303 (5)".
- 4 Page 16, line 4, strike "other than the department of personnel" and
5 substitute "~~other than the department of personnel~~".
- 6 Page 16, strike lines 13 through 17 and substitute:
- 7 "(a) A person ~~or business~~ that is authorized to transact business in
8 Colorado and that maintains its principal place of business in Colorado;
9 or
10 (b) A person ~~or business~~ that:".
- 11 Page 16, strike line 25 and substitute:
- 12 "(38) "RESPONSIBLE" MEANS THE".
- 13 Page 17, line 4, strike "REQUEST FOR PROPOSALS OR INVITATION FOR BIDS"
14 and substitute "SOLICITATION".
- 15 Page 18, line 5, strike "INFORMATION" and substitute "INFORMATION,
16 WHETHER ATTACHED OR INCORPORATED BY REFERENCE,".
- 17 Page 18, line 19, strike "OR "GOODS"".
- 18 Page 19, line 6, strike "24-103-101.5," and substitute "24-103-201.5,".
- 19 Page 19, line 11, strike "CONTRACT".
- 20 Page 19, after line 14 insert:
- 21 "**SECTION 8.** In Colorado Revised Statutes, **amend** 24-102-101
22 as follows:
23 **24-102-101. Authority and duties of the executive director.**
24 Subject to the provisions of ~~part 4~~ PART 2 of this ~~article~~ ARTICLE 102, the
25 executive director of the department of personnel has the authority and
26 responsibility to promulgate rules, consistent with this code, governing
27 the procurement and disposal of any and all supplies, services, and
28 construction to be procured by the state, except for surplus state property

1 as provided in section 17-24-106.6, ~~C.R.S.~~, and except as provided in part
2 4 of article 82 of this ~~title~~ TITLE 24. The executive director shall consider
3 and decide matters of policy within the provisions of this code."

4 Renumber succeeding sections accordingly.

5 Page 23, line 6, strike "(19);" and substitute "(18);".

6 Page 23, line 13, strike "(19)." and substitute "(18).".

7 Page 24, line 1, strike "(19)" and substitute "(18)".

8 Page 24, strike lines 8 through 11 and substitute:

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

11 **24-102-302. Purchasing agencies - establishment - authority.**

12 (1) Capital construction and controlled maintenance, as defined and
13 delegated to ~~principal representatives~~ A PROCUREMENT OFFICIAL by part
14 13 of article 30 of this ~~title~~ TITLE 24, shall be procured by such ~~principal~~
15 ~~representatives~~ PROCUREMENT OFFICIAL as the appropriate purchasing
16 agency.

17 (2) If the executive director OR HIS OR HER DESIGNEE is of the
18 opinion".

19 Page 27, line 7, strike "A POTENTIAL VENDOR" and substitute "POTENTIAL
20 VENDORS".

21 Page 30, line 19, strike "~~shall~~" and substitute "shall".

22 Page 30, line 20, strike "MAY".

23 Page 31, strike lines 4 and 5, and substitute "written notice to the ~~low~~
24 ~~responsible bidder whose bid meets the requirements and criteria set forth~~
25 ~~in the invitation for bids except as~~".

26 Page 31, line 6, strike "~~24-103-202.5~~." and substitute "~~24-103-202.5~~
27 PROVIDES FOR A CONTRACT WITH THE BEST VALUE AT THE LOWEST COST
28 TO THE STATE."

29 Page 31, line 8, strike "(1) and (7);" and substitute "(1), (7), and (8);".

1 Page 32, after line 7 insert:

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

8 Page 32, line 24, after "director," insert "THE CHIEF PROCUREMENT
9 OFFICER,".

10 Page 32, line 25, strike "either" and substitute "~~either~~ ANY SUCH".

11 Page 33, line 24, strike "(1);" and substitute "(1) and (3)(b);".

12 Page 34, after line 15 insert:

13 "(3) The requirements of this section need not be applied to any
14 contract in which:

15 (b) The contract price is based on established ~~catalogue~~ CATALOG
16 prices or market prices;".

17 Page 36, line 3, strike "PUBLICATION." and substitute "PUBLICATION OF A
18 LIST THAT SHALL BE REFERRED TO AS THE SERVICES SET ASIDE LIST."

19 Page 37, lines 17 and 18, strike "WITH PRICE BEING THE PRIMARY
20 CONSIDERATION." and substitute "TAKING INTO CONSIDERATION FACTORS
21 OTHER THAN PRICE ALONE."

22 Page 39, line 19, strike "officer's" and substitute "~~officer's~~ AGENT'S".

23 Page 47, lines 13, strike "(48)." and substitute "(47).".

24 Page 57, line 10, strike "portion" and substitute "portion, (2)(a)(V),".

25 Page 57, after line 15 insert:

26 "(2) (a) Adjustments in price shall be computed in one or more of
27 the following ways:

28 (V) In the absence of agreement by the parties, by a unilateral

1 determination by the state of the costs attributable to the events or
2 situations under such clauses with adjustment of profit or fee, all as
3 computed by the state pursuant to the applicable sections of any rules
4 issued under ~~article 107 of this title~~ SECTION 24-106-108, and subject to
5 the provisions of article 109 of this ~~title~~ TITLE 24."

6 Page 57, strike lines 18 through 26 and substitute "24-91-103.5 (1) and
7 (2) AND SECTION 24-30-1303 (1)(s)(IV). ~~However, the head of a division~~
8 ~~within the department designated by the executive director or the head of~~
9 ~~a purchasing agency may vary the clauses for inclusion in any particular~~
10 ~~state construction contract so long as any variations are supported by a~~
11 ~~written determination that describes the circumstances justifying such~~
12 ~~variations and notice of any material variation is stated in the invitation~~
13 ~~for bids or request for proposals. No variation that is inconsistent with~~
14 ~~section 24-91-103.5 (1) and (2) shall be made pursuant to this subsection~~
15 ~~(4)."~~

16 Page 60, line 16, strike "(19);" and substitute "(18);".

17 Page 67, line 19, strike "TERM OF THE" and substitute "CHIEF".

18 Page 67 of the bill, strike lines 20 through 24 and substitute
19 "PROCUREMENT OFFICER DETERMINES THAT EXTENUATING
20 CIRCUMSTANCES EXIST AND AN EXTENSION OF THE CONTRACT BEYOND
21 THE TERM INCLUDED IN THE SOLICITATION IS IN THE BEST INTEREST OF THE
22 GOVERNMENTAL BODY, THEN THE CHIEF PROCUREMENT OFFICER MAY
23 APPROVE A LONGER TERM FOR A REASONABLE TIME BASED ON WHAT IS
24 PRACTICABLE AND NECESSARY GIVEN THE CIRCUMSTANCES. The state
25 shall initiate the renewal or extension of a".

26 Page 69, line 3, strike "(19);" and substitute "(18);".

27 Page 70, line 1, strike "and the vendor will evaluate each other's" and
28 substitute "~~and the vendor will evaluate each other's~~ THE VENDOR'S".

29 Page 73, lines 1 and 2, strike "and 24-106-110".

30 Page 73, lines 5 and 6, strike "PERSON OR ENTITY," and substitute
31 "PERSON,".

32 Page 73, line 6, strike "SPECIFICALLY PERMITTED" and substitute

- 1 "AUTHORIZED".
- 2 Page 73, line 10, strike "OR ENTITY".
- 3 Page 73, line 12, after "STATE" insert "CAUSED BY THE NEGLIGENCE OR
4 WILLFUL MISCONDUCT OF SUCH PERSON OR SUCH PERSON'S EMPLOYEES OR
5 AGENTS".
- 6 Page 73, strike lines 18 through 27.
- 7 Page 74, strike lines 1 through 18.
- 8 Page 75, strike lines 2 through 6 and substitute:
9 "(2) "MATERIAL ISSUE" MEANS A NONTRIVIAL DEFECT IN THE
10 SOLICITATION OR AWARD THAT WOULD PREJUDICE THE OUTCOME OF THE
11 PROCUREMENT. THE PRESENCE OF MULTIPLE NONMATERIAL ISSUES IN A
12 SOLICITATION OR AWARD DOES NOT CONSTITUTE A MATERIAL ISSUE
13 UNLESS THE AGGRIEVED PARTY CAN ESTABLISH THAT THOSE
14 NONMATERIAL ISSUES TOGETHER WOULD PREJUDICE THE OUTCOME OF THE
15 PROCUREMENT.".
- 16 Page 77, line 14, strike "**procurements during protests.**" and substitute
17 "**procurements.**".
- 18 Page 77, line 15, strike "SOLICITATION" and substitute "REQUEST FOR
19 PROPOSALS".
- 20 Page 77, line 16, strike "SOLICITATION" and substitute "REQUEST FOR
21 PROPOSALS".
- 22 Page 80, line 19, strike "IN" and substitute "FOR THE PURPOSES OF THIS
23 ARTICLE 109, IN".
- 24 Page 80, line 26, strike "**director. Unless**" and substitute "**director - stay
25 of procurements. (1) Unless**".
- 26 Page 81, after line 14 insert:
27 "(2) A CONTRACT FOR A TOTAL VALUE OF ONE MILLION FIVE
28 HUNDRED THOUSAND DOLLARS OR MORE RESULTING FROM A REQUEST FOR
29 PROPOSALS IS NOT AWARDED UNTIL ANY APPEAL MADE IN CONNECTION
30 WITH THE REQUEST FOR PROPOSALS HAS BEEN RESOLVED PURSUANT TO

1 THIS PART 2; EXCEPT THAT THE EXECUTIVE DIRECTOR OR THE EXECUTIVE
2 DIRECTOR'S DESIGNEE MAY OVERRIDE THE STAY IF HE OR SHE DETERMINES
3 THAT SUCH OVERRIDE IS IN THE BEST INTEREST OF THE STATE."

4 Page 81, strike line 27.

5 Page 82, strike lines 1 through 10.

6 Page 84, strike lines 18 through 23 and substitute:

7 **"24-109-301. Interest.** EXCEPT FOR INTEREST PAYABLE ON
8 LIABILITY INCURRED BY THE STATE UNDER SECTION 24-30-202 (24),
9 interest on amounts determined to be due to a contractor or to the state
10 UNDER THIS CODE shall ~~be payable~~ ACCRUE from the date the payment
11 ~~was due in accordance with the terms of the contract or the claim was~~
12 ~~filed, whichever is earlier, through the date of decision or judgment,~~
13 ~~whichever is later~~ CONTROVERSY WAS SUBMITTED PURSUANT TO SECTION
14 24-109-106 THROUGH THE FINAL RESOLUTION OF THE CONTROVERSY BY
15 THE PROCUREMENT OFFICIAL OR UPON FINAL DETERMINATION OF THE
16 EXECUTIVE DIRECTOR OR ADJUDICATION OF THE DENVER DISTRICT COURT,
17 WHICHEVER OCCURS LAST. Interest shall be calculated at ~~eleven percent~~
18 ~~per annum~~ AT THE AMOUNT DUE AT THE RATE SET FORTH IN THE
19 CONTRACT OR AT THE RATE OF ONE PERCENT PER MONTH, WHICHEVER IS
20 GREATER, UNTIL THE AMOUNT IS PAID IN FULL."

21 Page 85, line 20, strike "CORRECTABLE OR".

22 Page 85, strike lines 21 through 27 and substitute "ANY RELIEF NOT
23 EXPRESSLY PROVIDED FOR IN THIS PART 5 IS PROHIBITED."

24 Page 87, line 22, strike "ITS" and substitute "A".

25 Page 95, line 22, strike "(48)," and substitute "(47),".

26 Page 95, line 23, strike "(43)," and substitute "(42),".

27 Page 97, line 17, strike "(11)," and substitute "(10),".

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