SENATE BILL 19-196

SENATE SPONSORSHIP
Lee and Danielson,

HOUSE SPONSORSHIP
(None),

Senate Committees
State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

CONCERNING THE MODIFICATION OF PROCUREMENT REQUIREMENTS
FOR STATE CONTRACTS FOR PUBLIC PROJECTS.

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 bill modifies procurement requirements for state contracts for public projects. The bill makes the following changes:

Invitation for bids: Currently, all construction contracts for public projects that do not receive federal money may be solicited by invitation for bids. The bill specifies that only a construction contract for a public project that is reasonably expected to cost $1 million or less may be
solicited by invitation for bids.

**Competitive sealed best value bids:** Currently, all construction contracts for public projects that do not receive federal money may be awarded by competitive sealed best value bidding. The bill specifies that, unless prohibited by federal law, a construction contract for a public project that is reasonably expected to cost over $1 million is required to be awarded through competitive sealed best value bidding or integrated project delivery, and a construction contract for a public project that is reasonably expected to cost $1 million or less may be awarded through competitive sealed best value bidding or integrated project delivery.

Current law specifies the evaluation factors that are required to be included in an invitation for competitive sealed best value bids for a public project. The bill adds several required evaluation factors including the craft labor staffing plan for the project for the bidder and the bidder's subcontractors, the anticipated utilization by the bidder and its subcontractors of apprentices registered with federal or state apprenticeship agencies to complete the work under the contract, and the safety plan and safety record of the bidder and the bidder's subcontractors.

**Disclosure of subcontractors:** The bill requires any contractor that responds to a competitive solicitation for a public project to disclose, in its initial bid or proposal, the top 5 subcontractor disciplines it plans to use to fulfill the requirements of the contract. The bill specifies how the top 5 subcontractor disciplines are measured and requires contractors to disclose subcontractors for the mechanical, electrical, and plumbing requirements of the contract, even if they are not included in the top 5 disciplines.

**Apprenticeship utilization requirements:** The general contractor for a public project financed in whole or in part by state money in the amount of $1 million or more is required to submit, prior to the contract award, documentation to the contracting agency that certifies that all subcontractors used on the project participate in apprenticeship training programs that have been approved by a federal or state apprenticeship agency and have a proven record of graduating apprentices for at least 3 of the past 5 years. The contractor is required to provide specified supporting documentation to the contracting agency and the agency is required to make the documentation available to the public on its website. A contractor that plans to submit a bid for a public project may request a waiver of the apprenticeship requirements and the contracting agency is required make public all waivers and the specific rationale for granting the waiver.

**Integrated project delivery:** Current law specifies that integrated project delivery is a project delivery method in which there is a contractual agreement between an agency and a single participating entity for the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these
services, for a public project. The bill adds additional evaluation factors that a contracting agency is required to use to evaluate proposals and the capabilities of participating entities. The additional factors include information about past performance and experience of the bidder, the bidder's project management plan for the contract, the bidder's staffing plan, the bidder's safety plan and safety record, the bidder's job standards, and the availability and use of domestically produced iron, steel, and related manufactured goods to execute the contract.

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

SECTION 1. The short title of this act is the "Colorado Quality Apprenticeship Training Act of 2019".

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

24-92-103. Construction of public projects - invitation for bids. (1) All construction contracts for public projects that do not receive federal moneys MAY BE SOLICITED BY INVITATION FOR BIDS pursuant to this section.

SECTION 3. In Colorado Revised Statutes, 24-92-103.5, amend (1), (3)(e), (3)(f), and (3)(g); and add (3)(e.5) as follows:

24-92-103.5. Construction of public projects - invitation for best value bids. (1) UNLESS PROHIBITED BY APPLICABLE FEDERAL LAW, all construction contracts for public projects that do not receive federal moneys MAY BE AWARDED THROUGH COMPETITIVE SEALED BEST VALUE BIDDING pursuant to this section OR THROUGH INTEGRATED PROJECT DELIVERY PURSUANT TO ARTICLE 93 OF THIS TITLE 24.
(b) Unless prohibited by federal law, all construction contracts for public projects for which the appropriation or expenditure of money is reasonable expected not to exceed one million dollars may be awarded through competitive sealed best value bidding pursuant to this section or through integrated project delivery pursuant to Article 93 of this Title 24.

(c) Projects for which a contracting agency of government has obtained authorization to use integrated project delivery contracts shall be governed by procedures specified in Article 93 of this Title 24.

(3) The invitation for competitive sealed best value bids must identify the evaluation factors upon which the award will be made. When making the award determination, the responsible officer shall evaluate the factors specified in the invitation for bids and shall not evaluate any other factors other than those specified in the invitation for bids. The factors that must be included in the invitation for bids and that the responsible officer shall consider include, but need not be limited to:

(e) The bidder's craft labor staffing plan for the project for the bidder and the bidder's subcontractors, which shall be assessed by their ability to reliably ensure a sufficient supply of properly trained and qualified craft labor personnel in all appropriate trades required for the project. The craft labor staffing plan shall also include:

(I) The estimated use, as a percentage of the total workforce required for the project, of registered apprentices by the bidder and any subcontractors to complete the work under the contract; and
(II) The estimated use, as a percentage of the total workforce required for the project, of persons who are members of any of the groups specified in section 24-49.5-105 (4)(a) to (4)(e), by the bidder and any subcontractors to complete the work under the contract;

(e.5) The anticipated utilization by the bidder and its subcontractors of apprenticeship programs registered with the United States department of labor's office of apprenticeship or state apprenticeship councils recognized by the United States department of labor's office of apprenticeship to complete the work under the contract;

(f) The bidder's safety plan and safety record of the bidder and the bidder's subcontractors;

(g) The bidder's job standards, including the bidder's method of personnel procurement, employment of Colorado workers, workforce development and long-term career opportunities of workers, the availability of training programs, including apprenticeships approved by APPRENTICESHIP PROGRAMS REGISTERED WITH the United States department of labor LABOR'S OFFICE OF APPRENTICESHIP OR STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP, the benefits provided to workers, including health care and defined benefit or defined contribution retirement benefits, and whether the bidder pays industry-standard wages; and

SECTION 4. In Colorado Revised Statutes, add 24-92-115 and 24-92-116 as follows:

24-92-115. Disclosure of subcontractors - mechanical,
electrical, and plumbing contracts - public projects. Any contractor that responds to a competitive solicitation for a public project, including a solicitation for a public project that will have an integrated project delivery contract pursuant to Article 93 of this title 24, shall disclose in its initial bid or proposal the top five subcontractor disciplines it plans to use to fulfill the requirements of the contract. The top five subcontractor disciplines shall be measured by the cost of each discipline as a percentage of the total cost of the contract. The disclosure of subcontractor disciplines shall include the mechanical, electrical, and plumbing requirements of the contract, even if they are not included in the top five disciplines.

24-92-116. Apprenticeship utilization requirements - mechanical, electrical, and plumbing contracts - public projects - definition. (1) (a) Unless prohibited by applicable federal law, the contract for any public works project, including a public works project that will have an integrated project delivery contract pursuant to Article 93 of this title 24, financed in whole or in part by state money in the amount of one million dollars or more shall require the general contractor or other firm to which the contract is awarded to submit, prior to the contract award, documentation to the agency of government that:

(I) Identifies the contractors or subcontractors that will be used for all mechanical, electrical, and plumbing work required on the project;

(II) Certifies that all firms identified participate in
APPRENTICESHIP PROGRAMS REGISTERED WITH THE UNITED STATES
DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP OR STATE
APPRENTICESHIP COUNCILS RECOGNIZED BY THE UNITED STATES
DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP AND HAVE
GRADUATED APPRENTICES FOR AT LEAST THREE OF THE PAST FIVE YEARS
AND HAVE A DEMONSTRATED COMPLETION RATE OF AT LEAST FIFTY
PERCENT FOR AT LEAST THREE OF THE PAST FIVE YEARS; AND

(III) SUPPLIES SUPPORTING DOCUMENTATION VERIFYING THE
INFORMATION PROVIDED IN THE CERTIFICATION SPECIFIED IN SUBSECTION
(1)(a)(II) OF THIS SECTION.

(b) FOR THE PURPOSES OF SUBSECTION (1)(a)(II) OF THIS SECTION,
"GRADUATING" MEANS THE COMPLETION OF A MULTI-YEAR PROGRAM
INCLUDING THE REQUISITE CLASSROOM COURSE WORK AND ON-THE-JOB
TRAINING REQUIREMENTS, THE ATTAINMENT OF INDUSTRY STANDARD
CERTIFICATIONS OR A PROFESSIONAL LICENSE, AND A CERTIFICATE OF
COMPLETION ISSUED BY THE UNITED STATES DEPARTMENT OF LABOR'S
OFFICE OF APPRENTICESHIP.

(2) THE DOCUMENTATION REQUIRED PURSUANT TO SUBSECTION (1)
OF THIS SECTION SHALL BE MADE PUBLICLY AVAILABLE BY THE
CONTRACTING AGENCY OF GOVERNMENT THROUGH ITS WEBSITE WITHIN
THIRTY DAYS FROM WHEN IT IS SUBMITTED.

(3) TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF
SUBSECTION (1) OF THIS SECTION, THE GENERAL CONTRACTOR OR OTHER
FIRM TO WHICH THE CONTRACT IS AWARDED SHALL AGREE TO PROVIDE
ADDITIONAL DOCUMENTATION TO THE CONTRACTING AGENCY REGARDING
AFFECTED APPRENTICESHIP TRAINING PROGRAMS AND TO PROVIDE THE
STATE ACCESS TO ITS BUSINESS RECORDS RELATING TO THE
REQUIREMENTS OF THIS SECTION.

(4) A CONTRACTOR THAT PLANS TO SUBMIT A BID FOR A PUBLIC WORKS PROJECT MAY REQUEST A WAIVER OF THE REQUIREMENTS OF THIS SECTION PRIOR TO SUBMITTING A BID. A CONTRACTOR THAT REQUESTS A WAIVER MUST PROVIDE SUBSTANTIAL EVIDENCE TO THE AGENCY OF GOVERNMENT SOLICITING THE CONTRACT THAT THERE ARE NO AVAILABLE, ELIGIBLE SUBCONTRACTORS TO FULFILL THE MECHANICAL, ELECTRICAL, OR PLUMBING PORTIONS OF THE CONTRACT. EACH AGENCY OF GOVERNMENT THAT HAS CONTRACTS FOR PUBLIC PROJECTS SUBJECT TO THE REQUIREMENTS OF THIS SECTION SHALL MAKE PUBLIC ALL WAIVERS AND THE SPECIFIC RATIONALE FOR GRANTING THE WAIVER.

(5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO SUPERSEDE THE REQUIREMENTS FOR LICENSED PLUMBERS, LICENSED ELECTRICIANS, OR APPRENTICES REGISTERED WITH THE STATE PURSUANT TO TITLE 12, INCLUDING SECTIONS 12-23-105, 12-23-110.5, 12-58-105, AND 12-58-117.

SECTION 5. In Colorado Revised Statutes, 24-93-104, amend (1) as follows:

24-93-104. Integrated project delivery contracts - authorization - effect of other laws. (1) Notwithstanding any other provision of law, Any agency may award an IPD contract for a public project in accordance with the provisions of this article ARTICLES 93 upon the determination by such agency that integrated project delivery represents a timely or cost-effective alternative for a public project AND UPON APPROVAL OF THE AGENCY INVOLVED IN THE CONTRACT.

SECTION 6. In Colorado Revised Statutes, 24-93-106, amend (1) as follows:

24-93-106. Requests for proposals - evaluation and award of
integrated project delivery contracts. (1) An agency shall prepare and
publish a request for proposals for each IPD contract that complies with
the requirements of this section. Requests for proposals for IPD contracts
shall, at a minimum, include the following evaluation factors and
subfactors that shall be used to evaluate the proposals and capabilities of
participating entities:

(a) Price;

(b) Design and technical approach to the project;

(c) Past performance and experience

THE EXPERIENCE, PAST PERFORMANCE, AND EXPERTISE OF THE BIDDER AND THE BIDDER’S
PRIMARY SUBCONTRACTORS IN CONNECTION WITH PRIOR CONSTRUCTION
CONTRACTS, INCLUDING ITS PERFORMANCE IN THE AREAS OF COST,
QUALITY, SCHEDULE, SAFETY, COMPLIANCE WITH PLANS AND
SPECIFICATIONS, AND ADHERENCE TO APPLICABLE LAWS AND
REGULATIONS;

(d) Project management capabilities, including financial
resources, equipment, management personnel, project schedule, and
management plan; and

(e) Craft labor capabilities, including adequacy of craft labor
supply and access to federal or state-approved apprenticeship programs,
if available

THE BIDDER'S PROJECT MANAGEMENT PLAN FOR THE
CONSTRUCTION CONTRACT THAT IDENTIFIES THE KEY MANAGEMENT
PERSONNEL THAT WILL BE USED FOR THE PROJECT, THE PROPOSED PROJECT
SCHEDULE, THE BIDDER'S QUALITY CONTROL PROGRAM AND PROJECT
SAFETY PROGRAM, FINANCIAL RESOURCES, EQUIPMENT, AND ANY OTHER
INFORMATION THAT DEMONSTRATES THE BIDDER'S COMPETENCY TO
PERFORM THE CONTRACT, INCLUDING TECHNICAL QUALIFICATIONS AND
RESOURCES;

(f) CRAFT LABOR CAPABILITIES, INCLUDING ADEQUACY OF CRAFT LABOR SUPPLY AND ACCESS TO APPRENTICESHIP PROGRAMS REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP OR STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP, IF AVAILABLE;

(g) THE BIDDER'S STAFFING PLAN, INCLUDING ITS COMMITMENT TO USE CONTRACTORS AND SUBCONTRACTORS THAT:

(I) CERTIFY THAT THEY PARTICIPATE IN APPRENTICESHIP PROGRAMS REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP OR STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP AND HAVE GRADUATED APPRENTICES FOR AT LEAST THREE OF THE PAST FIVE YEARS AND HAVE A DEMONSTRATED COMPLETION RATE OF AT LEAST FIFTY PERCENT FOR AT LEAST THREE OF THE PAST FIVE YEARS; AND

(II) SUPPLY SUPPORTING DOCUMENTATION VERIFYING THE INFORMATION PROVIDED IN THIS CERTIFICATION;

(h) THE BIDDER'S SAFETY PLAN AND SAFETY RECORD;

(i) THE BIDDER'S JOB STANDARDS, INCLUDING THE BIDDER'S METHOD OF PERSONNEL PROCUREMENT, EMPLOYMENT OF COLORADO WORKERS, WORKFORCE DEVELOPMENT AND LONG-TERM CAREER OPPORTUNITIES OF WORKERS, THE AVAILABILITY OF TRAINING PROGRAMS, INCLUDING APPRENTICESHIP PROGRAMS REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP OR STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THE UNITED STATES
DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP, THE BENEFITS
PROVIDED TO WORKERS, INCLUDING HEALTH CARE AND DEFINED BENEFIT
OR DEFINED CONTRIBUTION RETIREMENT BENEFITS, AND WHETHER THE
BIDDER PAYS INDUSTRY-STANDARD WAGES;

(j) THE ESTIMATED USE, AS A PERCENTAGE OF THE TOTAL
WORKFORCE REQUIRED FOR THE PROJECT, OF REGISTERED APPRENTICES BY
THE BIDDER AND ANY SUBCONTRACTORS TO COMPLETE THE WORK UNDER
THE CONTRACT;

(k) THE ESTIMATED USE, AS A PERCENTAGE OF THE TOTAL
WORKFORCE REQUIRED FOR THE PROJECT, OF PERSONS WHO ARE MEMBERS
OF ANY OF THE GROUPS SPECIFIED IN SECTION 24-49.5-105 (4)(a) TO (4)(e),
BY THE BIDDER AND ANY SUBCONTRACTORS TO COMPLETE THE WORK
UNDER THE CONTRACT; AND

(l) THE AVAILABILITY AND USE OF DOMESTICALLY PRODUCED
IRON, STEEL, AND RELATED MANUFACTURED GOODS TO EXECUTE THE
CONTRACT.

SECTION 7. Act subject to petition - effective date -
applicability. (1) This act takes effect at 12:01 a.m. on the day following
the expiration of the ninety-day period after final adjournment of the
general assembly (August 2, 2019, if adjournment sine die is on May 3,
2019); except that, if a referendum petition is filed pursuant to section 1
(3) of article V of the state constitution against this act or an item, section,
or part of this act within such period, then the act, item, section, or part
will not take effect unless approved by the people at the general election
to be held in November 2020 and, in such case, will take effect on the
date of the official declaration of the vote thereon by the governor.
(2) This act applies to solicitations issued on or after January 1, 2020.