

CHAPTER 161

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**GOVERNMENT - STATE**

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**HOUSE BILL 96-1301**

BY REPRESENTATIVES Tucker, McElhany, and Schwarz;  
also SENATOR Alexander.

**AN ACT**

**CONCERNING THE USE OF COMPETITIVE SEALED BEST VALUE BIDDING IN AWARDING CONTRACTS UNDER THE "PROCUREMENT CODE" THAT PROVIDE THE BEST VALUE AT THE LOWEST COST TO THE STATE.**

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

**SECTION 1.** 24-103-201 (1), Colorado Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

(a.5) SECTION 24-103-202.3, CONCERNING COMPETITIVE SEALED BEST VALUE BIDDING;

**SECTION 2.** Part 2 of article 103 of title 24, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**24-103-202.3. Competitive sealed best value bidding.** (1) WHEN, PURSUANT TO RULES, THE STATE PURCHASING DIRECTOR, THE HEAD OF A PURCHASING AGENCY, OR A DESIGNEE OF EITHER OFFICER WHO IS IN A HIGHER RANKING EMPLOYMENT POSITION THAN A PROCUREMENT OFFICER DETERMINES IN WRITING THAT THE USE OF COMPETITIVE SEALED BEST VALUE BIDDING IS ADVANTAGEOUS TO THE STATE, A CONTRACT MAY BE ENTERED INTO BY COMPETITIVE SEALED BEST VALUE BIDDING.

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

(2) AN INVITATION FOR BIDS UNDER COMPETITIVE SEALED BEST VALUE BIDDING SHALL BE MADE IN THE SAME MANNER AS PROVIDED IN SECTION 24-103-202 (2), (3), AND (4).

(3) (a) THE STATE PURCHASING DIRECTOR OR THE HEAD OF A PURCHASING AGENCY MAY ALLOW A BIDDER TO SUBMIT PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES TO THE BASE BID FOR A COMMODITY OR SERVICE THAT WILL RESULT IN A PRODUCT OR SERVICE TO THE STATE HAVING THE BEST VALUE AT THE LOWEST COST. THE INVITATION FOR BIDS FOR COMPETITIVE SEALED BEST VALUE BIDDING MUST CLEARLY STATE THE PURCHASE DESCRIPTION OF THE COMMODITY OR SERVICE BEING SOLICITED AND THE TYPES OF ENHANCEMENTS, OPTIONS, OR ALTERNATIVES THAT MAY BE BID; EXCEPT THAT THE FUNCTIONAL SPECIFICATIONS INTEGRAL TO THE COMMODITY OR SERVICE MAY NOT BE REDUCED.

(b) PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES TO THE BID MAY BE EVALUATED BY THE STATE PURCHASING DIRECTOR OR THE HEAD OF A PURCHASING AGENCY TO DETERMINE WHETHER THE TOTAL OF THE BID PRICE AND THE PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES PROVIDE A CONTRACT WITH THE BEST VALUE AT THE LOWEST COST TO THE STATE. THIS EVALUATION SHALL BE MADE UTILIZING THE RULES OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL PROMULGATED PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (3).

(c) A CONTRACT MAY BE AWARDED TO A BIDDER WHERE THE TOTAL AMOUNT OF A BID PRICE AND THE PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES OF THE BIDDER EXCEED THE TOTAL AMOUNT OF THE BID PRICE AND THE PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES OF ANOTHER BIDDER IF IT IS DETERMINED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3) THAT THE HIGHER TOTAL AMOUNT PROVIDES A CONTRACT WITH THE BEST VALUE AT THE LOWEST COST TO THE STATE.

(d) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL SHALL PROMULGATE RULES TO BE UTILIZED BY THE STATE PURCHASING DIRECTOR OR THE HEAD OF A PURCHASING AGENCY IN MAKING THE EVALUATION PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3). THE RULES SHALL PROVIDE:

(I) CRITERIA FOR OBJECTIVELY MEASURING PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES TO A BID, INCLUDING RELEVANT FORMULAS OR GUIDELINES;

(II) CRITERIA FOR OBJECTIVELY DETERMINING WHETHER THE PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES PROVIDE THE BEST VALUE AT THE LOWEST COST TO THE STATE.

(4) THE CONTRACT SHALL BE AWARDED WITH REASONABLE PROMPTNESS BY WRITTEN NOTICE TO THE LOW RESPONSIBLE BIDDER WHOSE BID MEETS THE REQUIREMENTS AND CRITERIA SET FORTH IN THE INVITATION FOR BIDS EXCEPT AS OTHERWISE PROVIDED FOR CERTAIN LOW TIE BIDS UNDER SECTION 24-103-202.5.

**SECTION 3. Effective date.** This act shall take effect July 1, 1996.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 22, 1996