

CHAPTER 49

GOVERNMENT - STATE

HOUSE BILL 96-1225

BY REPRESENTATIVES Snyder and Sullivan;
also SENATOR Feeley.

AN ACT

**CONCERNING DECISIONS OF STATE OFFICERS RELATED TO THE RESOLUTION OF CONTROVERSIES
UNDER THE PROCUREMENT CODE.**

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

SECTION 1. 24-103-203 (7), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-103-203. Competitive sealed proposals. (7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. A contract resulting from a competitive sealed proposal is not awarded until ~~the time for ANY protest or appeal~~ MADE IN CONNECTION WITH THE PROPOSAL has ~~lapsed or the administrative appeals process has been completed~~ BEEN RESOLVED PURSUANT TO 24-109-102. No property interest of any nature shall accrue until the contract is awarded and signed by both parties.

SECTION 2. 24-109-102 (2), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-109-102. Protested solicitations and awards. (2) The state purchasing director, the head of a purchasing agency, or a designee of either officer shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. A written decision regarding the protest shall be rendered within seven working days after the protest is filed. THE DECISION SHALL BE BASED ON AND LIMITED TO A

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

REVIEW OF THE ISSUES RAISED BY THE AGGRIEVED BIDDER, OFFEROR, OR CONTRACTOR AND SHALL SET FORTH EACH FACTOR TAKEN INTO ACCOUNT IN REACHING THE DECISION. This authority shall be exercised pursuant to rules promulgated to provide for the expeditious AND DOCUMENTED resolution of the protest.

SECTION 3. 24-109-105 (2) (d), Colorado Revised Statutes, 1988 Repl. Vol., is amended, and the said 24-109-105 is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-109-105. Debarment and suspension. (2) A person may be debarred for any of the following reasons:

(d) WILLFUL MATERIAL failure ~~without good cause~~ to perform in accordance with the terms of ~~any contract~~ ONE OR MORE CONTRACTS, FOLLOWING NOTICE OF SUCH FAILURE, OR A HISTORY OF MATERIAL FAILURE TO PERFORM, OR OF MATERIALLY UNSATISFACTORY PERFORMANCE OF, ONE OR MORE CONTRACTS; or

SECTION 4. 24-109-204, Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-109-204. Decisions of the executive director. (1) On each appeal submitted, the executive director or ~~his~~ THE EXECUTIVE DIRECTOR'S 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.

(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, WITHIN THIRTY WORKING DAYS AFTER RECEIPT OF THE APPEAL; AND

(b) IN THE CASE OF ANY CONTROVERSY ARISING BETWEEN THE STATE AND A CONTRACTOR BY VIRTUE OF A CONTRACT BETWEEN THEM, WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE APPEAL.

SECTION 5. 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: April 8, 1996