

CHAPTER 427

GOVERNMENT - STATE

HOUSE BILL 08-1047

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AN ACT

CONCERNING THE CREATION OF A SET ASIDE PROGRAM FOR A NONPROFIT AGENCY THAT BIDS FOR STATE SERVICES SOLICITATIONS WHEN THE NONPROFIT AGENCY EMPLOYS PERSONS WITH SEVERE DISABILITIES, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Article 103 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 8
SET ASIDES IN STATE PROCUREMENT
FOR ALL PERSONS WITH SEVERE DISABILITIES**

24-103-801. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) IT IS IN THE BEST INTEREST OF THE STATE TO ENHANCE THE DIGNITY AND CAPACITY FOR SELF-SUPPORT OF ALL PERSONS WITH SEVERE DISABILITIES AND TO MINIMIZE THEIR DEPENDENCE ON GOVERNMENT PROGRAMS FOR THEIR BASIC NEEDS; AND

(b) IT BENEFITS THE STATE AS WELL AS ALL PERSONS WITH SEVERE DISABILITIES TO ENCOURAGE AND ASSIST ALL PERSONS WITH SEVERE DISABILITIES TO ACHIEVE MAXIMUM PERSONAL INDEPENDENCE THROUGH USEFUL AND PRODUCTIVE GAINFUL EMPLOYMENT BY IDENTIFYING A MARKET FOR THE SERVICES THAT THEY CAN OFFER.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT THE PURPOSE

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

OF THIS ACT IS TO CREATE A SET ASIDE PROGRAM FOR NONPROFIT AGENCIES THAT EMPLOY ANY PERSONS WITH SEVERE DISABILITIES AND TO ALLOW NONPROFIT AGENCIES TO BID ON CERTAIN TYPES OF SERVICES SOLICITATIONS. IN FURTHERANCE OF THIS PURPOSE, THE GENERAL ASSEMBLY RECOGNIZES THAT IT IS IN THE BEST INTERESTS OF ALL PERSONS WITH SEVERE DISABILITIES THAT THE EMPLOYMENT OPTIONS CREATED PURSUANT TO THIS ACT EXPAND THE OPPORTUNITIES FOR ALL PERSONS WITH SEVERE DISABILITIES TO WORK IN INTEGRATED EMPLOYMENT SETTINGS.

24-103-802. Definitions. AS USED IN THIS PART 8, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BUNDLING" MEANS A STATE AGENCY CONSOLIDATING TWO OR MORE SOLICITATIONS FOR SERVICES PREVIOUSLY PROVIDED OR PERFORMED UNDER SEPARATE SMALLER CONTRACTS INTO A SINGLE SOLICITATION THAT IS LIKELY TO BE UNSUITABLE FOR AWARD TO A NONPROFIT AGENCY DUE TO ANY OF THE FOLLOWING:

(a) THE DIVERSITY, SIZE, OR SPECIALIZED NATURE OF THE ELEMENTS OF THE REQUIRED SERVICES;

(b) THE AGGREGATE DOLLAR VALUE OF THE ANTICIPATED AWARD; OR

(c) THE GEOGRAPHICAL DISPERSION OF THE CONTRACT PERFORMANCE SITES.

(2) "DEPARTMENT" MEANS THE DEPARTMENT OF HUMAN SERVICES.

(3) "NONPROFIT AGENCY" MEANS A PRIVATE NONPROFIT ORGANIZATION ESTABLISHED UNDER THE LAWS OF THE UNITED STATES OR THIS STATE THAT IS OPERATED IN THE INTEREST OF PERSONS WITH SEVERE DISABILITIES OR THAT SPECIALIZES IN SERVICES FOR PERSONS WITH SEVERE DISABILITIES, THE NET INCOME OF WHICH DOES NOT BENEFIT IN WHOLE OR IN PART ANY SHAREHOLDER OR OFFICER.

(4) "SELF-CERTIFIED VENDOR" MEANS A NONPROFIT AGENCY THAT HAS APPLIED AND BEEN APPROVED BY THE DEPARTMENT TO BID ON CERTAIN SERVICES SOLICITATIONS PURSUANT TO THIS PART 8.

(5) "SERVICES SOLICITATION" MEANS A SOLICITATION BY A STATE AGENCY FOR THE FURNISHING OF LABOR, TIME, OR EFFORT BY A CONTRACTOR NOT INVOLVING THE DELIVERY OF A SPECIFIC END PRODUCT OTHER THAN PRODUCTS THAT ARE MERELY INCIDENTAL TO THE REQUIRED PERFORMANCE.

(6) "SEVERE DISABILITY" MEANS ONE OR MORE PHYSICAL OR MENTAL DISABILITIES THAT CONSTITUTE A SUBSTANTIAL IMPAIRMENT TO EMPLOYMENT AND THAT ARE OF SUCH A NATURE AS TO REQUIRE MULTIPLE VOCATIONAL REHABILITATION SERVICES OVER AN EXTENDED PERIOD.

(7) "STATE AGENCY" MEANS ANY STATE OFFICE, DEPARTMENT, COMMISSION, INSTITUTION, OR BUREAU, OR ANY AGENCY, DIVISION, OR UNIT WITHIN A DEPARTMENT OR OFFICE. NOTWITHSTANDING THE PROVISIONS OF SECTION 24-101-105, "STATE AGENCY" SHALL INCLUDE EACH INSTITUTION OF HIGHER EDUCATION AND THE COLORADO COMMISSION ON HIGHER EDUCATION. "STATE

AGENCY" SHALL NOT INCLUDE ANY MUNICIPALITY, COUNTY, SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY OTHER LOCAL GOVERNMENT IN THE STATE.

24-103-803. Nonprofit agencies - self-certified vendor list - creation.

(1) ANY NONPROFIT AGENCY THAT IS INTERESTED IN PERFORMING STATE SERVICES AND THAT WOULD LIKE TO BID ON SOLICITATIONS FOR SUCH SERVICES THROUGH THE SET ASIDE PROGRAM CREATED IN THIS PART 8 SHALL FIRST APPLY TO THE DEPARTMENT, IN A MANNER TO BE DETERMINED BY THE DEPARTMENT, TO BECOME A SELF-CERTIFIED VENDOR PURSUANT TO THIS SECTION.

(2) THE DEPARTMENT SHALL ACCEPT APPLICATIONS FROM ANY NONPROFIT AGENCY THAT SEEKS TO BECOME A SELF-CERTIFIED VENDOR TO BID ON CERTAIN SERVICES SOLICITATIONS. IN ORDER FOR A NONPROFIT AGENCY TO BECOME A SELF-CERTIFIED VENDOR, THE NONPROFIT AGENCY SHALL CERTIFY THAT:

(a) THE NONPROFIT AGENCY IS AN INDEPENDENT TAX-EXEMPT CHARITABLE OR SOCIAL WELFARE ORGANIZATION OPERATING UNDER SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED;

(b) THE NONPROFIT AGENCY IS REGISTERED ON THE CENTRALIZED SUPPLIER DATABASE OF ALL BUSINESSES THAT ARE INTERESTED IN PROVIDING GOODS AND SERVICES TO THE STATE, WHICH DATABASE IS CREATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL PURSUANT TO SECTION 24-102-202.5;

(c) THE NONPROFIT AGENCY SATISFIES THE STATUTORY REQUIREMENTS TO BE ELIGIBLE TO BID ON A STATE SERVICES SOLICITATION PURSUANT TO SECTION 24-103-401 AND ANY RULES PROMULGATED BY THE DEPARTMENT OF PERSONNEL IN FURTHERANCE OF SAID SECTION;

(d) THE NONPROFIT AGENCY WOULD BE CAPABLE OF HIRING AND WOULD EMPLOY PEOPLE TO PERFORM ANY SERVICE FOR WHICH THE NONPROFIT AGENCY BIDS, AND THAT OF THOSE PEOPLE EMPLOYED A TOTAL OF SEVENTY-FIVE PERCENT WOULD BE PERSONS WITH SEVERE DISABILITIES AND A MINIMUM OF TWENTY PERCENT WOULD BE PERSONS WITH SEVERE DISABILITIES WHO HAVE DEVELOPMENTAL DISABILITIES AS DEFINED IN SECTION 27-10.5-102, C.R.S.; AND

(e) ANY OTHER CRITERIA CONSISTENT WITH THE PURPOSES OF THIS PART 8 THAT ARE DEEMED NECESSARY BY THE DEPARTMENT.

(3) THE DEPARTMENT SHALL CREATE AND MAINTAIN A LIST OF ALL NONPROFIT AGENCIES THAT HAVE ATTAINED SELF-CERTIFIED VENDOR STATUS AND SHALL MAKE THE LIST AVAILABLE TO THE DEPARTMENT OF PERSONNEL. THE DEPARTMENT OF PERSONNEL SHALL DISTRIBUTE THE LIST TO EACH STATE AGENCY.

(4) A NONPROFIT AGENCY'S SELF-CERTIFIED VENDOR STATUS IS VALID FOR ONE YEAR AFTER THE DATE THAT THE NONPROFIT AGENCY'S SELF-CERTIFICATION APPLICATION WAS APPROVED. AFTER ONE YEAR, A NONPROFIT AGENCY IS REQUIRED TO REAPPLY TO THE DEPARTMENT FOR SELF-CERTIFIED VENDOR STATUS TO BE ELIGIBLE TO RESPOND TO A SET ASIDE SOLICITATION PURSUANT TO THIS PART 8.

(5) (a) NOTHING IN THIS PART 8 SHALL BE CONSTRUED TO REQUIRE A NONPROFIT

AGENCY THAT SEEKS TO RESPOND TO SERVICES SOLICITATIONS TO BECOME A SELF-CERTIFIED VENDOR; EXCEPT THAT A NONPROFIT AGENCY SHALL NOT BE ELIGIBLE TO BID FOR A SET ASIDE SOLICITATION PURSUANT TO THIS PART 8 UNLESS THE NONPROFIT AGENCY IS SELF-CERTIFIED PURSUANT TO THIS SECTION.

(b) NOTHING IN THIS PART 8 SHALL BE CONSTRUED TO PREVENT A NONPROFIT AGENCY FROM BIDDING ON ANY STATE AGENCY SOLICITATION THAT IS NOT A SET ASIDE SOLICITATION PURSUANT TO THIS PART 8.

24-103-804. Services solicitations - categorical identification. (1) (a) THE DEPARTMENT OF PERSONNEL SHALL PUBLISH A LIST OF THE SERVICES THAT STATE AGENCIES SEEK THROUGH SERVICES SOLICITATIONS AND SHALL MAKE THE LIST AVAILABLE TO NONPROFIT AGENCIES ON AN ANNUAL BASIS. AS PART OF A NONPROFIT AGENCY'S APPLICATION TO BECOME A SELF-CERTIFIED VENDOR PURSUANT TO SECTION 24-103-803, THE NONPROFIT AGENCY SHALL SPECIFY THE TASKS AND ACTIVITIES THAT IT IS ABLE TO PERFORM FOR STATE AGENCIES BASED ON THE LIST CREATED BY THE DEPARTMENT OF PERSONNEL.

(b) THE DEPARTMENT SHALL REVIEW EACH APPLICATION SUBMITTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) AND CREATE A LIST OF THE TYPES OF TASKS AND ACTIVITIES THAT IT DEEMS APPROPRIATE FOR A SELF-CERTIFIED VENDOR TO PERFORM. THE DEPARTMENT SHALL CREATE AN INITIAL TASKS AND ACTIVITIES LIST WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (1) AND SHALL REVIEW AND UPDATE THE LIST AT LEAST ANNUALLY.

(2) AFTER CREATING THE TASKS AND ACTIVITIES LIST PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT SHALL MEET WITH THE STATE PURCHASING DIRECTOR OR THE DIRECTOR'S DESIGNEE TO DETERMINE THE TYPES OF SERVICES SOLICITATIONS THAT WOULD INVOLVE SOME OR ALL OF THE TASKS OR ACTIVITIES SPECIFIED ON THE LIST AND THAT COULD BE SUCCESSFULLY PERFORMED BY SELF-CERTIFIED VENDORS. THE DEPARTMENT AND THE STATE PURCHASING DIRECTOR OR THE DIRECTOR'S DESIGNEE SHALL SOLICIT INPUT FROM THE PURCHASING DIRECTOR OF EACH STATE AGENCY REGARDING THE NATURE OF SERVICES FOR WHICH THE STATE AGENCY PERIODICALLY ISSUES SOLICITATIONS FOR BIDS AND THE TYPE OF SERVICES THAT THE STATE AGENCY BELIEVES COULD BE SUCCESSFULLY PERFORMED BY A SELF-CERTIFIED VENDOR. WITHIN NINETY DAYS AFTER THE ESTABLISHMENT OF THE LIST OF TASKS AND ACTIVITIES CREATED PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT SHALL CREATE A LIST OF THE TYPES OF SERVICES SOLICITATIONS THAT IT DEEMS APPROPRIATE FOR A SELF-CERTIFIED VENDOR TO PERFORM. THE LIST SHALL BE REFERRED TO AS THE "SERVICES SET ASIDE LIST". THE DEPARTMENT SHALL REVIEW AND UPDATE THE LIST AT LEAST ANNUALLY.

(3) THE DEPARTMENT SHALL PROVIDE THE SERVICES SET ASIDE LIST TO THE STATE PURCHASING DIRECTOR. THE STATE PURCHASING DIRECTOR SHALL PROVIDE THE SERVICES SET ASIDE LIST TO THE PURCHASING DIRECTOR OF EACH STATE AGENCY AND SHALL MAKE THE LIST AVAILABLE TO ANY NONPROFIT AGENCY THAT IS SELF-CERTIFIED TO BID ON SERVICES SOLICITATIONS PURSUANT TO THIS PART 8.

24-103-805. Contract set asides - bid process created by department of personnel - obligation of state agencies - rules. (1) ANY STATE AGENCY THAT

INTENDS TO SOLICIT BIDS FOR A SERVICE THAT IS INCLUDED ON THE SERVICES SET ASIDE LIST CREATED PURSUANT TO SECTION 24-103-804 SHALL FIRST SOLICIT BIDS FROM SELF-CERTIFIED VENDORS FOR SUCH SERVICE AND SHALL FOLLOW THE PROCEDURES SPECIFIED IN THIS SUBSECTION (1):

(a) IF TWO OR MORE SELF-CERTIFIED VENDORS BID ON THE SOLICITATION FOR THE SERVICES, THE PURCHASING DIRECTOR OF THE STATE AGENCY SHALL AWARD A CONTRACT TO ONE OF THE SELF-CERTIFIED VENDORS BASED ON A COMPETITIVE PRICE DETERMINATION.

(b) IF ONE SELF-CERTIFIED VENDOR BIDS ON THE SOLICITATION FOR THE SERVICES, THE PURCHASING DIRECTOR OF THE STATE AGENCY SHALL AWARD A CONTRACT TO THE SELF-CERTIFIED VENDOR AND SHALL ENSURE THAT THE CONTRACT IS AWARDED AT A FAIR AND REASONABLE PRICE OF UP TO FIFTEEN PERCENT ABOVE THE FAIR MARKET VALUE OF THE SERVICES, SUBJECT TO AVAILABLE APPROPRIATIONS.

(c) IF THE STATE AGENCY DOES NOT RECEIVE A BID FROM ANY SELF-CERTIFIED VENDOR FOR THE SERVICES, THE STATE AGENCY IS PERMITTED TO PROCURE THE SERVICES THROUGH OTHER APPROVED PROCUREMENT METHODS AND SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF THIS PART 8 FOR THAT SPECIFIC SOLICITATION.

(2) THE DEPARTMENT OF PERSONNEL SHALL, WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2), ESTABLISH A PROCESS WHEREBY ANY STATE AGENCY THAT INTENDS TO SOLICIT BIDS FOR A SERVICE THAT IS INCLUDED ON THE SERVICES SET ASIDE LIST CREATED PURSUANT TO SECTION 24-103-804 MAY SOLICIT BIDS SOLELY FROM SELF-CERTIFIED VENDORS.

(3) ANY STATE AGENCY THAT HAS AWARDED A SOLICITATION FOR SERVICES TO A SELF-CERTIFIED VENDOR PURSUANT TO PARAGRAPH (a) OR (b) OF SUBSECTION (1) OF THIS SECTION SHALL, BEFORE THE EXPIRATION OF THE TERM OF THE CONTRACT, RENEGOTIATE A FAIR AND REASONABLE PRICE FOR THE SERVICES WITH THE SELF-CERTIFIED VENDOR THAT HAS PERFORMED THE SERVICES FOR THE STATE AGENCY. THE STATE AGENCY IS NOT PERMITTED TO SOLICIT NEW BIDS FOR THE SERVICES PERFORMED BY THE SELF-CERTIFIED VENDOR UNLESS ONE OF THE FOLLOWING OCCURS:

(a) THE NONPROFIT AGENCY THAT IS THE SELF-CERTIFIED VENDOR NO LONGER WISHES TO PERFORM THE SERVICES FOR THE STATE AGENCY;

(b) THE STATE AGENCY DECIDES TO PERFORM THE SERVICES INTERNALLY AND HIRES EMPLOYEES WHO WILL BE EMPLOYEES OF THE STATE TO PERFORM THE SERVICES;

(c) THE STATE AGENCY NO LONGER NEEDS THE SERVICE THAT WAS PROVIDED BY THE SELF-CERTIFIED VENDOR; OR

(d) THE SELF-CERTIFIED VENDOR HAS NOT MET THE REQUIREMENTS FOR THE SERVICES OFFERED.

(4) ANY STATE AGENCY THAT IS REQUIRED TO SOLICIT BIDS FOR A SERVICE THAT

IS INCLUDED ON THE SERVICES SET ASIDE LIST IS PROHIBITED FROM BUNDLING THE SERVICE WITH ONE OR MORE OTHER SERVICES NOT INCLUDED ON THE SERVICES SET ASIDE LIST BEFORE SOLICITING BIDS FROM SELF-CERTIFIED VENDORS PURSUANT TO THIS SECTION. IF THE STATE AGENCY HAS NOT RECEIVED A BID FROM ANY SELF-CERTIFIED VENDOR AND IS THEREFORE AUTHORIZED TO PROCURE THE SERVICES THROUGH OTHER APPROVED PROCUREMENT METHODS, THE BUNDLING PROHIBITION SHALL NO LONGER APPLY TO THE STATE AGENCY FOR THAT SPECIFIC SOLICITATION FOR SERVICES.

(5) THE DEPARTMENT OF PERSONNEL SHALL PROMULGATE RULES TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION PURSUANT TO SECTION 24-102-101. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 4 OF THIS TITLE.

(6) ANY STATE AGENCY THAT HAS AWARDED A SOLICITATION FOR SERVICES TO A SELF-CERTIFIED VENDOR PURSUANT TO THIS PART 8 SHALL REPORT TO THE DEPARTMENT OF PERSONNEL REGARDING THE PROGRESS OF THE SOLICITATION IN A MANNER AND FREQUENCY TO BE DETERMINED BY THE DEPARTMENT OF PERSONNEL.

24-103-806. Compliance with state and federal laws. ANY SELF-CERTIFIED VENDOR THAT IS AWARDED A SOLICITATION FOR SERVICES PURSUANT TO THIS PART 8 IS REQUIRED TO COMPLY WITH STATE AND FEDERAL LAWS REGARDING EMPLOYEE COMPENSATION, EMPLOYEE PROTECTIONS, WORKERS' COMPENSATION, AND WORKPLACE SAFETY.

24-103-807. Additional requirements. ANY SELF-CERTIFIED VENDOR THAT BIDS TO PERFORM A SERVICES SOLICITATION SHALL INCLUDE IN THE BID THE PERCENTAGE OF THE TOTAL CONTRACT PRICE THAT IT WILL SPEND ON THE SALARY OR WAGES OF THE EMPLOYEES HIRED TO PERFORM THE SERVICES SOLICITATION, NOT INCLUDING THE SALARY OR WAGES FOR ADMINISTRATIVE STAFF OR EMPLOYEES.

SECTION 2. Appropriation- adjustments to the 2008 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of human services, for allocation to the office of operations, for the fiscal year beginning July 1, 2008, the sum of twenty-three thousand eight hundred dollars (\$23,800) and 0.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, the general fund appropriation to the controlled maintenance trust fund made in section 23 of the annual general appropriation act, for the fiscal year beginning July 1, 2008, shall be decreased by twenty-three thousand eight hundred dollars (\$23,800).

SECTION 3. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to solicitation for bids issued on or after the applicable effective date of this act.

Approved: June 5, 2008