

## CHAPTER 90

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**GOVERNMENT - STATE**


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**HOUSE BILL 10-1010**

BY REPRESENTATIVE(S) Ferrandino, Court, Gerou, Apuan, Benefield, Kerr J., Labuda, Miklosi, Schafer S., Todd, Tyler, Merrifield, Pommer, Summers;  
also SENATOR(S) Morse, Brophy, Heath, Bacon, Boyd, Hodge, Keller, Newell, Williams.

**AN ACT**

**CONCERNING AUTHORIZATION FOR AGENCIES OF THE STATE TO ENTER INTO PUBLIC-PRIVATE INITIATIVE AGREEMENTS WITH NONPROFIT ENTITIES.**

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

**SECTION 1.** Article 38 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 2  
PUBLIC-PRIVATE INITIATIVES**

**24-38-201. Legislative declaration.** THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT STATE GOVERNMENT SHOULD DELIVER PUBLIC SERVICES IN THE MOST COST-EFFECTIVE AND EFFICIENT MANNER, THAT NONPROFIT ENTITIES THAT CONTRACT FOR PUBLIC SERVICES LEVERAGE THE USE OF PUBLIC FUNDS WITH PRIVATE DONATIONS, AND THAT INCREASING OPPORTUNITIES FOR NONPROFIT ENTITIES TO CONTRACT WITH STATE AGENCIES WILL FURTHER THE COST-EFFECTIVE AND EFFICIENT DELIVERY OF PUBLIC SERVICES. IT IS THE INTENT OF THE GENERAL ASSEMBLY IN ENACTING THIS PART 2 ONLY TO PROVIDE FLEXIBILITY TO STATE GOVERNMENT SO THAT IT CAN DELIVER PUBLIC SERVICES MORE COST-EFFECTIVELY AND EFFICIENTLY AND NOT TO ESTABLISH OR AUTHORIZE THE ESTABLISHMENT OF NEW PROGRAMS.

**24-38-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "NONPROFIT CONTRIBUTION" MEANS THE SUPPLY BY A NONPROFIT ENTITY OF RESOURCES TO ACCOMPLISH ALL OR ANY PART OF THE WORK ON A PROJECT OR THE

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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.*

## IMPLEMENTATION OR ADMINISTRATION OF A PROGRAM.

(2) "NONPROFIT ENTITY" MEANS A CORPORATION OR ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE THAT IS EXEMPT FROM TAXATION PURSUANT TO SECTION 501 (a) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (a), AS AMENDED, AND IS LISTED AS AN EXEMPT ORGANIZATION IN SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (c) (3), AS AMENDED.

(3) "PUBLIC BENEFIT" MEANS AN AGENCY GRANT OF A RIGHT OR INTEREST IN OR CONCERNING AN AGENCY PROJECT OR PROGRAM.

(4) "PUBLIC-PRIVATE INITIATIVE" MEANS A NONTRADITIONAL ARRANGEMENT BETWEEN AN AGENCY AND ONE OR MORE NONPROFIT ENTITIES THAT PROVIDES FOR:

(a) ACCEPTANCE OF A NONPROFIT CONTRIBUTION TO AN AGENCY PROJECT OR SERVICE IN EXCHANGE FOR A PUBLIC BENEFIT CONCERNING THE PROJECT OR SERVICE OTHER THAN ONLY A MONEY PAYMENT;

(b) SHARING OF RESOURCES AND THE MEANS OF PROVIDING PROJECTS OR SERVICES; OR

(c) COOPERATION IN RESEARCHING, DEVELOPING, AND IMPLEMENTING PROJECTS OR SERVICES.

(5) "UNSOLICITED PROPOSAL" MEANS A WRITTEN PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE THAT IS SUBMITTED BY A NONPROFIT ENTITY FOR THE PURPOSE OF ENTERING INTO AN AGREEMENT WITH AN AGENCY BUT THAT IS NOT IN RESPONSE TO A FORMAL SOLICITATION OR REQUEST ISSUED BY THE AGENCY.

**24-38-203. Unsolicited proposals.** (1) AN AGENCY MAY CONSIDER, EVALUATE, AND ACCEPT AN UNSOLICITED PROPOSAL ONLY IF THE PROPOSAL COMPLIES WITH ALL OF THE REQUIREMENTS OF THIS SECTION.

(2) AN AGENCY MAY CONSIDER AN UNSOLICITED PROPOSAL ONLY IF THE PROPOSAL:

(a) WILL ASSIST THE AGENCY IN CARRYING OUT ITS DUTIES IN A COST-EFFECTIVE AND EFFICIENT MANNER WITHOUT REPLACING EXISTING STATE EMPLOYEES;

(b) IS INDEPENDENTLY ORIGINATED AND DEVELOPED BY THE PROPOSER;

(c) IS PREPARED WITHOUT AGENCY SUPERVISION;

(d) INCLUDES SUFFICIENT DETAIL AND INFORMATION TO ALLOW THE AGENCY TO EVALUATE THE PROPOSAL IN AN OBJECTIVE AND TIMELY MANNER AND TO DETERMINE IF THE PROPOSAL BENEFITS THE AGENCY; AND

(e) IS NOT AN ADVANCE PROPOSAL FOR A KNOWN AGENCY REQUIREMENT THAT CAN BE ACQUIRED BY COMPETITIVE METHODS UNLESS:

(I) THE AGENCY HAS NOT ESTABLISHED A TIMETABLE FOR SATISFYING THE KNOWN REQUIREMENT; OR

(II) THE PROPOSAL IS LIKELY TO SIGNIFICANTLY SHORTEN A TIMETABLE FOR SATISFYING THE KNOWN REQUIREMENT.

(3) PARAGRAPHS (b) AND (c) OF SUBSECTION (2) OF THIS SECTION SHALL NOT BE DEEMED TO PROHIBIT AN AGENCY FROM ENCOURAGING THE SUBMISSION OF UNSOLICITED PROPOSALS THAT ARE WELL-DEVELOPED AND CONSISTENT WITH THE AGENCY'S GENERAL POLICY PRIORITIES BY PROVIDING WRITTEN OR ORAL INFORMATION TO ANY PERSON REGARDING THE POLICY PRIORITIES OR THE REQUIREMENTS AND PROCEDURES FOR SUBMITTING AN UNSOLICITED PROPOSAL.

(4) IF AN UNSOLICITED PROPOSAL DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, THE AGENCY SHALL RETURN THE PROPOSAL WITHOUT FURTHER ACTION. IF AN UNSOLICITED PROPOSAL MEETS ALL OF THE REQUIREMENTS OF SUBSECTION (2), THE AGENCY MAY FURTHER EVALUATE THE PROPOSAL PURSUANT TO THIS SECTION.

(5) AN AGENCY SHALL BASE ITS EVALUATION OF AN UNSOLICITED PROPOSAL ON THE FOLLOWING FACTORS:

(a) UNIQUE AND INNOVATIVE METHODS, APPROACHES, OR CONCEPTS DEMONSTRATED BY THE PROPOSAL;

(b) SCIENTIFIC, TECHNICAL, OR SOCIOECONOMIC MERITS OF THE PROPOSAL;

(c) POTENTIAL CONTRIBUTION OF THE PROPOSAL TO THE AGENCY'S MISSION;

(d) CAPABILITIES, RELATED EXPERIENCE, FACILITIES, OR TECHNIQUES OF THE PROPOSER OR UNIQUE COMBINATIONS OF THESE QUALITIES THAT ARE INTEGRAL FACTORS FOR ACHIEVING THE PROPOSAL OBJECTIVES;

(e) COST SAVINGS, EFFICIENT DELIVERY OF SERVICES, OR ENHANCED QUALITY OF SERVICE DELIVERED TO THE RECIPIENT; AND

(f) ANY OTHER FACTORS APPROPRIATE TO A PARTICULAR PROPOSAL.

(6) AN AGENCY MAY ACCEPT AN UNSOLICITED PROPOSAL ONLY IF:

(a) THE UNSOLICITED PROPOSAL RECEIVES A FAVORABLE EVALUATION; AND

(b) THE AGENCY MAKES A WRITTEN DETERMINATION BASED ON FACTS AND CIRCUMSTANCES THAT THE UNSOLICITED PROPOSAL IS AN ACCEPTABLE BASIS FOR AN AGREEMENT TO OBTAIN SERVICES EITHER WITHOUT COMPETITION OR, IF APPLICABLE, AFTER THE AGENCY TAKES THE ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION.

(7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8) OF THIS SECTION, IF AN UNSOLICITED PROPOSAL REQUIRES AN AGENCY TO SPEND PUBLIC MONEYS IN AN AMOUNT THAT IS REASONABLY EXPECTED TO EXCEED FIFTY THOUSAND DOLLARS IN

THE AGGREGATE FOR ANY FISCAL YEAR, THE AGENCY SHALL TAKE THE FOLLOWING ACTIONS BEFORE ACCEPTING THE UNSOLICITED PROPOSAL:

(a) PROVIDE PUBLIC NOTICE THAT THE AGENCY WILL CONSIDER COMPARABLE PROPOSALS. THE NOTICE SHALL:

(I) BE GIVEN AT LEAST FOURTEEN DAYS PRIOR TO THE DATE SET FORTH THEREIN FOR THE OPENING OF PROPOSALS THROUGH ANY REASONABLE METHOD, WHICH MAY INCLUDE PUBLICATION ON THE AGENCY'S INTERNET WEB SITE, POSTING ON THE STATE'S BID INFORMATION AND DISTRIBUTION SYSTEM, OR PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION.

(II) BE PROVIDED TO ANY NONPROFIT ENTITY THAT EXPRESSES, IN WRITING TO THE AGENCY, AN INTEREST IN A PUBLIC-PRIVATE INITIATIVE THAT IS SIMILAR IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL;

(III) OUTLINE IN SUMMARY FORM THE GENERAL NATURE AND SCOPE OF THE UNSOLICITED PROPOSAL, INCLUDING THE WORK TO BE PERFORMED ON THE PROJECT AND THE TERMS OF ANY NONPROFIT CONTRIBUTIONS OFFERED AND PUBLIC BENEFITS REQUESTED CONCERNING THE PROJECT;

(IV) REQUEST INFORMATION TO DETERMINE IF THE PROPOSER OF A COMPARABLE PROPOSAL HAS THE NECESSARY EXPERIENCE AND QUALIFICATIONS TO PERFORM THE PUBLIC-PRIVATE INITIATIVE; AND

(V) SPECIFY THE ADDRESS TO AND THE DATE BY WHICH COMPARABLE PROPOSALS MUST BE SUBMITTED, ALLOWING A REASONABLE TIME TO PREPARE AND SUBMIT THE PROPOSALS;

(b) DETERMINE, IN ITS DISCRETION, IF ANY SUBMITTED PROPOSAL IS COMPARABLE IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL AND WARRANTS FURTHER EVALUATION;

(c) EVALUATE EACH COMPARABLE PROPOSAL, TAKING RELEVANT FACTORS INTO CONSIDERATION; AND

(d) CONDUCT GOOD FAITH DISCUSSIONS AND, IF NECESSARY, NEGOTIATIONS CONCERNING EACH COMPARABLE PROPOSAL.

(8) THE ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION DO NOT APPLY TO AN UNSOLICITED RESEARCH PROPOSAL IF AN AGENCY REASONABLY DETERMINES THAT THE ACTIONS WOULD IMPROPERLY DISCLOSE EITHER THE ORIGINALITY OF THE RESEARCH OR PROPRIETARY INFORMATION ASSOCIATED WITH THE RESEARCH PROPOSAL.

(9) AN AGENCY MAY ACCEPT A COMPARABLE PROPOSAL SUBMITTED PURSUANT TO SUBSECTION (7) OF THIS SECTION IF THE AGENCY DETERMINES THAT THE COMPARABLE PROPOSAL IS THE MOST ADVANTAGEOUS TO THE STATE IN COMPARISON TO AN UNSOLICITED PROPOSAL OR OTHER SUBMITTED PROPOSALS. IN MAKING THE DETERMINATION, THE AGENCY SHALL USE ONLY THE PROPOSAL EVALUATION CRITERIA SPECIFIED IN THIS SECTION AND SHALL NOT USE THE

METHODS OF SOURCE SELECTION SET FORTH IN PART 2 OF ARTICLE 103 OF THIS TITLE.

(10) IF AN UNSOLICITED PROPOSAL IS ACCEPTED OR IF A COMPARABLE PROPOSAL IS ACCEPTED PURSUANT TO SUBSECTION (9) OF THIS SECTION, THE ACCEPTING AGENCY SHALL USE THE PROPOSAL AS THE BASIS FOR NEGOTIATION OF AN AGREEMENT.

(11) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, EACH AGENCY SHALL DETERMINE ITS OWN PROCESS FOR CONSIDERING, EVALUATING, AND ACCEPTING OR REJECTING UNSOLICITED PROPOSALS. IF THE AGENCY DETERMINES THAT AN UNSOLICITED PROPOSAL IS AN ACCEPTABLE BASIS FOR NEGOTIATION OF AN AGREEMENT PURSUANT TO THIS SECTION, THE AGENCY'S PROCUREMENT OFFICER SHALL BE RESPONSIBLE FOR TAKING THE ACTION REQUIRED BY SUBSECTION (10) OF THIS SECTION. BEFORE AN AGENCY CONSIDERS AN UNSOLICITED PROPOSAL OR A COMPARABLE PROPOSAL UNDER THIS PART 2, THE AGENCY SHALL ADOPT EITHER RULES PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE OR OTHER WRITTEN POLICY GUIDELINES THAT IT DETERMINES ARE NECESSARY OR APPROPRIATE TO IMPLEMENT THIS PART 2, INCLUDING RULES OR GUIDELINES ON THE EVALUATION OF UNSOLICITED PROPOSALS AND THE RECEIPT, CONTENT, AND PROPER HANDLING OF UNSOLICITED OR COMPARABLE PROPOSALS. THE RULES OR GUIDELINES SHALL ALSO REQUIRE BOTH THE NONPROFIT ENTITY AND THE AGENCY TO DISCLOSE ANY INDIVIDUAL OR ORGANIZATIONAL CONFLICTS OF INTEREST RELATED TO THE PUBLIC-PRIVATE INITIATIVE AND TO DOCUMENT AND PROPERLY MANAGE ANY DISCLOSURES.

(12) AT THE TIME A PRINCIPAL DEPARTMENT OF STATE GOVERNMENT SUBMITS ITS ANNUAL BUDGET REQUEST TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY, THE DEPARTMENT SHALL REPORT TO THE COMMITTEE REGARDING ANY PUBLIC-PRIVATE INITIATIVE AGREEMENT THEN IN EFFECT THAT THE DEPARTMENT OR AN AGENCY WITHIN THE DEPARTMENT HAS ENTERED INTO PURSUANT TO THIS PART 2. THE INFORMATION REPORTED SHALL INCLUDE, AT A MINIMUM, A BRIEF DESCRIPTION OF THE PURPOSE AND TERMS OF THE AGREEMENT, THE AMOUNT OF PUBLIC MONEYS REQUIRED TO BE EXPENDED BY THE STATE UNDER THE TERMS OF THE AGREEMENT, AND THE IDENTITY OF THE PRIVATE PARTNER THAT IS A PARTY TO THE AGREEMENT.

**24-38-204. Public-private initiative agreements - cost savings.** (1) AN AGENCY SHALL ENTER INTO AN AGREEMENT FOR EACH PUBLIC-PRIVATE INITIATIVE THAT IT ACCEPTS.

(2) AN AGENCY SHALL INCLUDE TERMS AND CONDITIONS IN THE AGREEMENT THAT IT DETERMINES ARE APPROPRIATE IN THE PUBLIC INTEREST.

(3) IF AN AGENCY ACHIEVES COST-SAVINGS IN A FISCAL YEAR BY ENTERING INTO A PUBLIC-PRIVATE INITIATIVE AGREEMENT, THE AGENCY SHALL BE ELIGIBLE TO RETAIN A PORTION OF ANY COST SAVINGS RESULTING FROM THE AGREEMENT AS PROVIDED IN SECTION 24-38-103.

(4) AN AGENCY THAT ENTERS INTO A PUBLIC-PRIVATE INITIATIVE AGREEMENT WITH A NONPROFIT ENTITY IS NOT A PARTNER OR A JOINT VENTURER WITH THE NONPROFIT ENTITY FOR ANY PURPOSE.

**24-38-205. Organizations banned from contract awards.** NOTWITHSTANDING ANY PROVISION OF THIS PART 2 TO THE CONTRARY, ANY ORGANIZATION BANNED FROM RECEIVING FEDERAL FUNDS, AND ANY SUCCESSOR ORGANIZATIONS, SHALL NOT BE AWARDED A PUBLIC-PRIVATE INITIATIVE CONTRACT PURSUANT TO THIS PART 2.

**SECTION 2.** 24-38-102 (2), Colorado Revised Statutes, is amended to read:

**24-38-102. Definitions.** As used in this article, unless the context otherwise requires:

(2) "Cost savings" means any money that an agency does not expend from its general fund appropriations for a given fiscal year that is a direct result of cost-cutting measures, ~~"Cost savings" includes~~ INCLUDING an action that would result in a base reduction due to permanent reductions in spending. ~~but~~ In no case shall "cost savings" include or be a result of a case load reduction or personal services contracts that the agency entered into under a managed competition process; EXCEPT THAT "COST SAVINGS" DOES INCLUDE SAVINGS REALIZED FROM PERSONAL SERVICES CONTRACTS ENTERED INTO PURSUANT TO A PUBLIC-PRIVATE INITIATIVE AGREEMENT BETWEEN THE AGENCY AND A NONPROFIT ENTITY IN ACCORDANCE WITH PART 2 OF THIS ARTICLE.

**SECTION 3.** 24-103-201 (1), Colorado Revised Statutes, 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:

(g) PART 2 OF ARTICLE 38 OF THIS TITLE, CONCERNING PUBLIC-PRIVATE INITIATIVES.

**SECTION 4. Act subject to petition - effective date.** 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 (August 11, 2010, if adjournment sine die is on May 12, 2010); 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 shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 15, 2010