

CHAPTER 88

TRANSPORTATION

HOUSE BILL 15-1046

BY REPRESENTATIVE(S) Moreno, Esgar, Fields, Melton, Mitsch Bush, Salazar, Tyler, Williams, Winter, Young;
also SENATOR(S) Scott, Martinez Humenik, Todd.

AN ACT

**CONCERNING AUTHORIZATION FOR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
TRANSPORTATION TO WAIVE DEPARTMENT PROJECT COST ESTIMATE-BASED STATUTORY
CONTRACT AMOUNT LIMITS WHEN AWARDING A HIGHWAY PROJECT CONTRACT.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

- (a) It is the responsibility of state agencies to find and promote more efficient ways to use taxpayer dollars;
- (b) The department of transportation is implementing several efficiency processes as part of a comprehensive internal review of its project cost estimating process;
- (c) This act reflects the department's ongoing efforts to provide transparent administrative processes for better use of taxpayer dollars;
- (d) A variety of factors, including labor costs, material costs, and economic variables, influence cost estimates for department construction projects;
- (e) Under current law, if there are fewer than three bidders for a department construction project, the department cannot make an award if the bids exceed statutory limits, resulting in longer project timelines and additional fiscal impacts to the department;
- (f) These statutory requirements for awarding contracts when there are fewer than three bidders are some of the most stringent in the country;

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

(g) Under specific circumstances, this act allows the department to conduct a thorough bid analysis to evaluate the low bid for a construction project when fewer than three bids are received; and

(h) It is therefore necessary, appropriate, and in the best interest of the state to enact this act and thereby create an efficient and transparent process to allow more construction projects to be completed throughout the state.

SECTION 2. In Colorado Revised Statutes, 43-1-113, **amend** (16) as follows:

43-1-113. Funds - budgets - fiscal year - reports and publications - repeal.

(16) (a) If there are fewer than three bidders on a DESIGN BID BUILD highway project, no award shall be made if the award is more than ten percent over the estimate of the department of transportation on the project; except that, if the estimate of the department on the project is less than one million dollars and there are fewer than three bidders, the executive director may make an award of more than ten percent, but less than twenty-five percent, over the estimate of the department to the low responsible bidder, as defined in section 24-103-101 (3), C.R.S.

(b) Repealed.

(c) (I) NOTWITHSTANDING THE LIMITATIONS SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (16), THE EXECUTIVE DIRECTOR MAY MAKE AN AWARD TO THE LOW RESPONSIBLE BIDDER REGARDLESS OF THE ESTIMATE OF THE DEPARTMENT IF THE EXECUTIVE DIRECTOR DETERMINES IN WRITING THAT IT IS IN THE BEST FINANCIAL, ECONOMIC, OR OTHER INTEREST OF THE STATE TO DO SO. THE WRITTEN DETERMINATION MUST BE INCLUDED IN THE CONTRACT FILE AND MADE PUBLICLY AVAILABLE BY POSTING ON THE DEPARTMENT'S WEB SITE.

(II) IN ITS ANNUAL PRESENTATION TO THE JOINT COMMITTEES OF REFERENCE OF THE GENERAL ASSEMBLY THAT HAVE JURISDICTION OVER TRANSPORTATION REQUIRED BY SECTION 2-7-203, C.R.S., THE DEPARTMENT SHALL IDENTIFY EACH PROJECT FOR WHICH THE EXECUTIVE DIRECTOR MADE AN AWARD PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) AND SHALL EXPLAIN THE REASONS FOR MAKING THE AWARD AND ESTIMATE THE AMOUNT OF COST SAVINGS ACHIEVED BY MAKING THE AWARD.

(III) THIS PARAGRAPH (c) IS REPEALED, EFFECTIVE JULY 1, 2018.

SECTION 3. 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, 2015