

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

COLORADO STATE CAPITOL
200 EAST COLFAX AVENUE SUITE 091
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157

EMAIL: OLLS.GA@STATE.CO.US

MEMORANDUM¹

TO: Statutory Revision Committee

FROM: Rebecca Bayetti, Office of Legislative Legal Services

DATE: February 21, 2024

SUBJECT: Proposed bill draft concerning technical changes to the Colorado "Procurement Code".

Summary

The department of personnel and administration (department) proposes that the Statutory Revision Committee (SRC) introduce legislation to make several technical changes to the Colorado "Procurement Code" (procurement code). Representatives of the department will be available to speak to the requested revisions and answer any questions the members of the SRC may have at the committee meeting on February 28, 2024.

Analysis

Section 1 of the proposed bill:

This section of the bill corrects a cross-reference in section 24-101-103 (28), C.R.S., to the definition of "information technology". Current law references section 24-37.5-102 (11), C.R.S., a subsection that contains the definition of "information security plan". The bill corrects this erroneous reference to instead refer to 24-37.5-102 (12), C.R.S., which defines "information technology."

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

This section also updates the terminology in the definition of "solicitation" in section 24-101-103 (43), C.R.S., to refer to an "electronic procurement system" instead of an "electronic bidding system." Other provisions of the procurement code use the terminology "electronic procurement system"; there are no other existing statutory references to "electronic bidding system." The bill updates this terminology to align with other provisions of the procurement code.

Section 2:

This section updates terminology in section 24-102-202 (3), C.R.S., which authorizes the department to delegate its purchasing authority, to align with definitions used in the procurement code. The current language of the statute allows delegation to "any department, agency, or official." The definition applicable to the procurement code, found in section 24-101-301 (18), C.R.S., defines "governmental body" as "any department, ... agency, ... or official, other than an elected official ...". The bill updates the statute to include the defined term "governmental body," and, in conformity with that change, clarifies that the "official" referenced in the statute is an "elected" official.

Section 3:

This section adds the word "used" in section 24-103-402, C.R.S., to clarify that the method of compiling and soliciting from lists of potential contractors may be as stated in rule.

Section 4:

This section updates terminology in 24-103-905, C.R.S., concerning awarding contracts to service-disabled veteran-owned small businesses, to align with current federal practice. This change updates specific references to "the United States department of veterans affairs" to be "the appropriate United States agency."

Section 5:

This section clarifies that a reference to a "public procurement unit" means a "local public procurement unit" in section 24-110-201 (4), which is in the statutes governing cooperative purchasing agreements (agreements). The procurement code defines "public procurement unit" as "either a local public procurement unit or a state public procurement unit" in section 24-101-301 (33), C.R.S. Current language in the statute governing cooperative purchasing agreements includes an order-of-priority list for the use of such agreements, with priority given first to state-issued agreements, second to state public procurement unit agreements, and third to "public procurement unit" or external public procurement unit agreements. Because this priority list already includes

state public procurement units, this change clarifies that the later reference to "public procurement unit" in that same list refers to local public procurement units only.

Statutory Charge²

Section 2-3-902, C.R.S., authorizes the SRC to examine the Colorado Revised Statutes for the purpose of discovering defects and anachronisms in the law and recommending needed reforms. Section 2-3-902, C.R.S., also authorizes the SRC to effect changes in the law as it deems necessary in order to modify contradictory laws and to harmonize the law with modern conditions. If the SRC finds that these provisions of the procurement code need updating to fix defects, avoid contradiction, or harmonize the law with modern conditions, the revisions proposed in the bill fit within the charge of the SRC.

Proposed Bill and Amendment

If the SRC wishes to introduce legislation to address the identified issues, the proposed bill draft correcting these issues is attached for review.

A proposed amendment is also attached for review. This amendment adds a subsection to section 24-103-201, C.R.S., to clarify that all statutory references to public bidding, public solicitation, requests for proposals, and other source selection methods must comply with the procurement code and associated rules, as applicable, unless specifically exempted. This additional subsection further provides that the procurement official will select the source selection method in the best interest of the state. The Office of Legislative Legal Services and the department request that the SRC determine if the statutory changes in the proposed amendment fit within the SRC's charge and whether this language should be included in the proposed bill.

² The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

DRAFT
2/17/24

DRAFT

LLS NO. 24-0994.01 Rebecca Bayetti x4348

COMMITTEE BILL

Statutory Revision Committee

BILL TOPIC: Technical Revisions to Procurement Code

A BILL FOR AN ACT

101 **CONCERNING TECHNICAL REVISIONS TO THE PROCUREMENT CODE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Statutory Revision Committee. The bill makes the following technical revisions to the procurement code (code):

- Provides the correct cross-reference to the definition of information technology (**section 1** of the bill);
- Updates the terminology used in the definition of solicitation to refer to "an electronic procurement system" instead of "an electronic bidding system" to remain consistent with other provisions of the code (**section 1**);

*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words indicate deletions from existing law.*

- Updates terminology in the statute authorizing delegation of the executive director of the department of personnel's purchasing authority to clarify that delegation is to a "governmental body", as defined in the code, instead of to a "department" or an "agency", and, in conformity with that change, that an "official" is an "elected" official (**section 2**);
- Clarifies the method of compiling and soliciting from lists of potential contractors (**section 3**);
- Updates references to the United States department of veterans affairs to instead be "the appropriate United States agency" (**section 4**); and
- Changes a reference from "public procurement unit" to "local public procurement unit" in a list in the cooperative purchasing statute that already includes "public procurement unit" (**section 5**).

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-101-301, **amend**
3 the introductory portion, (28), and (43) as follows:

4 **24-101-301. Definitions.** The terms defined in this section ~~shall~~
5 have the following meanings whenever they appear in this code, unless
6 the context in which they are used clearly requires a different meaning or
7 a different definition is prescribed for a particular article or portion
8 thereof:

9 (28) "Procurement" means buying, purchasing, renting, leasing,
10 or otherwise acquiring any supplies, services, or construction.
11 "Procurement" includes all functions that pertain to the obtaining of any
12 supply, service, or construction, including description of requirements,
13 selection and solicitation of sources, preparation and award of contract,
14 and all phases of contract administration. "Procurement" also includes the
15 procurement of information technology as defined in ~~section 24-37.5-102~~
16 ~~(11)~~ SECTION 24-37.5-102 (12).

1 (43) "Solicitation" means all documents and related information,
2 whether attached or incorporated by reference, published on an electronic
3 ~~bidding~~ PROCUREMENT system in connection with a procurement prior to
4 the response deadline.

5 **SECTION 2.** In Colorado Revised Statutes, 24-102-202, **amend**
6 (3) as follows:

7 **24-102-202. Authority of the executive director and chief**
8 **procurement officer - delegation of authority - rules.** (3) Subject to
9 rules, the executive director may delegate ~~his or her~~ THE EXECUTIVE
10 DIRECTOR'S purchasing authority to designees or to any ~~department,~~
11 ~~agency,~~ GOVERNMENTAL BODY or ELECTED official.

12 **SECTION 3.** In Colorado Revised Statutes, **amend** 24-103-402
13 as follows:

14 **24-103-402. Prequalification of suppliers.** Prospective suppliers
15 may be prequalified for particular types of supplies, services, and
16 construction, and the method of compiling and soliciting from lists of
17 potential contractors may be USED pursuant to rules.

18 **SECTION 4.** In Colorado Revised Statutes, 24-103-905, **amend**
19 (1)(a)(II) and (3) as follows:

20 **24-103-905. Service-disabled veteran-owned small businesses**
21 **- state procurement preference - definitions.** (1) As used in this
22 section, unless the context otherwise requires:

23 (a) "Service-disabled veteran-owned small business" means a
24 business that is:

25 (II) Officially registered and verified as a service-disabled
26 veteran-owned small business by the center for verification and
27 evaluation within the APPROPRIATE United States ~~department of veterans~~

1 ~~affairs~~ AGENCY.

2 (3) When a state agency intends to award a contract to a business
3 in furtherance of the three percent goal specified in subsection (2) of this
4 section, the state agency shall, prior to awarding the contract, require the
5 business to submit to the agency documentation from the APPROPRIATE
6 United States ~~department of veterans affairs~~ AGENCY that verifies that the
7 business is a service-disabled veteran-owned small business.

8 **SECTION 5.** In Colorado Revised Statutes, 24-110-201, **amend**
9 (4)(c) as follows:

10 **24-110-201. Cooperative purchasing authorized.** (4) Unless
11 otherwise approved by the chief procurement officer, the procurement
12 official shall comply with the following order of priority for the use of
13 cooperative purchasing agreements:

14 (c) Third, LOCAL public procurement unit or external public
15 procurement unit cooperative purchasing agreements.

16 **SECTION 6. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly; except
19 that, if a referendum petition is filed pursuant to section 1 (3) of article V
20 of the state constitution against this act or an item, section, or part of this
21 act within such period, then the act, item, section, or part will not take
22 effect unless approved by the people at the general election to be held in
23 November 2024 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor.

LLS NO. 24-0994.01_AMENDMENT #L.001
STATUTORY REVISION COMMITTEE AMENDMENT

LLS No. 24-0994.01 be amended as follows:

- 1 Amend LLS No. 24-0994.01, page 3, after line 11 insert:
 - 2 "SECTION 3. In Colorado Revised Statutes, 24-103-201, **add** (2)
 - 3 as follows:
 - 4 **24-103-201. Methods of source selection.** (2) UNLESS
 - 5 SPECIFICALLY EXEMPTED FROM THIS SUBSECTION (2), ALL STATUTORY
 - 6 REFERENCES TO PUBLIC BIDDING, PUBLIC SOLICITATION, REQUESTS FOR
 - 7 PROPOSALS, AND OTHER SOURCE SELECTION METHODS MUST COMPLY WITH
 - 8 THE CODE AND ASSOCIATED RULES, AS APPLICABLE. THE APPLICABLE
 - 9 PROCUREMENT OFFICIAL SHALL SELECT THE SOURCE SELECTION METHOD
 - 10 IN THE BEST INTEREST OF THE STATE."
- 11 Renumber succeeding sections accordingly.

** *** ** *** **