

CHAPTER 99

GOVERNMENT - STATE

HOUSE BILL 17-1051

BY REPRESENTATIVE(S) Rankin and Garnett, Becker K., Benavidez, Kraft-Tharp, Lontine, Mitsch Bush, Valdez, Young, Duran;
also SENATOR(S) Coram and Kerr, Aguilar, Cooke, Gardner, Kefalas, Martinez Humenik, Merrifield, Neville T., Scott, Tate, Todd, Grantham, Marble.

AN ACT**CONCERNING MODERNIZATION OF THE COLORADO "PROCUREMENT CODE".**

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

SECTION 1. In Colorado Revised Statutes, **amend** 24-101-101 as follows:

24-101-101. Short title. ~~THE SHORT TITLE OF~~ articles 101 to 112 of this ~~title shall~~ **be known and may be cited as** TITLE 24 IS the "Procurement Code", referred to in said articles as the "code".

SECTION 2. In Colorado Revised Statutes, **amend** 24-101-104 as follows:

24-101-104. Requirement of good faith. This code requires all parties involved in the PROCUREMENT OF ANY GOOD OR SERVICE OR IN THE negotiation, performance, or administration of ~~state contracts~~ ANY CONTRACT FOR THOSE GOODS OR SERVICES to act in good faith.

SECTION 3. In Colorado Revised Statutes, **amend** 24-101-105 as follows:

24-101-105. Application of this code. (1) (a) This code shall apply to all publicly funded contracts entered into by all governmental bodies of the executive branch of this state; except that this code shall not apply to:

(I) ~~The procurement of~~ Bridge and highway construction or to contracts for unsolicited or comparable proposals for public-private initiatives under section 43-1-1203; ~~C.R.S.;~~

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

(II) ~~The awarding of grants to or the awarding of~~ Contracts between the state and its political subdivisions or other governments, except as provided in article 110 of this ~~title~~ TITLE 24;

(II.5) GRANTS;

(III) ~~The procurement of~~ Public printing, as defined in section 24-70-201, except for the provisions of article 109 of this ~~title~~ TITLE 24;

(IV) ~~The procurement of~~ Professional services, as defined in section 24-30-1402;

(V) The Colorado state fair authority created pursuant to section 35-65-401 (1); ~~C.R.S.;~~

(VI) The state board of land commissioners in connection with contract expenditures from the state board of land commissioners investment and development fund created in section 36-1-153 (1), ~~C.R.S.;~~ or the commercial real property operating fund created in section 36-1-153.7; ~~C.R.S.;~~

(VII) Repealed.

(VIII) UTILITIES, INCLUDING WATER, ELECTRICITY, AND NATURAL GAS;

(IX) WORKS OF ART FOR DISPLAY, PURCHASE, OR PERFORMANCE;

(X) COPYRIGHTED MATERIALS SUCH AS BOOKS, PERIODICALS, COLLECTIONS, AND SUBSCRIPTIONS;

(XI) CONFERENCE FACILITIES AT HOTELS OR OTHER VENUES THAT INCLUDE, BUT NEED NOT TO BE LIMITED TO, MEETING ROOMS, AUDIO VISUAL EQUIPMENT, CATERING, AND GUEST ACCOMMODATION ROOMS;

(XII) CLIENT-BASED SERVICES INCLUDING MEDICAL SERVICES OR SERVICES WHERE THE CLIENT HAS THE RIGHT TO CHOOSE THE VENDOR;

(XIII) DUES AND MEMBERSHIPS;

(XIV) ANNUITIES; AND

(XV) REAL PROPERTY OR INTEREST IN REAL PROPERTY.

(a.5) IF THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE DETERMINES THAT REASONABLE COMPETITION EXISTS IN THE PROCUREMENT OF A GOOD OR SERVICE THAT IS EXEMPT FROM THE CODE PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE MAY REQUIRE A COMPETITIVE PROCESS.

(b) The governing board of each institution of higher education, including the Auraria higher education center established in article 70 of title 23, ~~C.R.S.;~~ by formal action of the board, and the Colorado commission on higher education, by formal action of the commission, may elect to be exempt from the provisions of this

code and may enter into contracts independent of the terms specified in this code.

(c) Repealed.

~~(d) Except as provided in section 24-111-103, this code shall also apply to contracts funded in whole or in part with federal assistance moneys. This code shall apply to the transfer or disposal of state supplies.~~

(e) Upon the request of a governmental body purchasing TO PURCHASE items for resale to the public, the head of a purchasing agency PROCUREMENT OFFICIAL may, by written determination, provide that this code shall not apply to items acquired for such resale.

(f) Nothing in this code or in rules promulgated under this code shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(g) UPON THE REQUEST TO ENTER INTO A REVENUE-PRODUCING CONTRACT, THE PROCUREMENT OFFICIAL MAY, BY WRITTEN DETERMINATION, PROVIDE THAT THIS CODE SHALL NOT APPLY TO THE REVENUE-PRODUCING CONTRACT. GOVERNMENTAL BODIES SHALL MAXIMIZE THE RETURN TO THE STATE WHEN THEY ARE PARTIES TO REVENUE-PRODUCING CONTRACTS.

(2) All political subdivisions and local public agencies of this state are authorized to adopt all or any part of this code and its accompanying rules.

~~(3) The provisions of sections 8-18-101 and 8-18-103, C.R.S., which require a preference for resident bidders and resident agricultural products under certain circumstances, apply to the award of contracts under this code.~~

~~(4) The executive director of the department of human services may procure the necessary services and support required to develop, implement, and operate state and federal child support enforcement welfare reform mandates which shall not be subject to this code. This procurement shall be limited to funds specifically appropriated for child support enforcement in fiscal year 1997-98 subject to available appropriations for information technology hardware, software, and related services.~~

SECTION 4. In Colorado Revised Statutes, **add** 24-101-106 and 24-101-107 as follows:

24-101-106. Procurement training. THE CHIEF PROCUREMENT OFFICER, OR HIS OR HER DESIGNEE, MAY DEVELOP AND CONDUCT A PROCUREMENT EDUCATION AND TRAINING PROGRAM FOR EMPLOYEES OF GOVERNMENTAL BODIES AND FOR VENDORS.

24-101-107. Procurement ethics. ANY PERSON WHO IS EMPLOYED BY A GOVERNMENTAL BODY WHO PURCHASES GOODS OR SERVICES OR IS INVOLVED IN THE PURCHASING PROCESS FOR THE STATE, ANY END USERS OF SUCH GOODS AND SERVICES, ANY VENDOR OR CONTRACTOR THAT DOES BUSINESS WITH THE STATE, AND ANY OTHER INTERESTED THIRD PARTIES TO THE PROCUREMENT PROCESS SHALL ENHANCE THE PROFICIENCY AND STATURE OF THE PURCHASING PROCESS BY

ADHERING TO THE HIGHEST STANDARDS OF ETHICAL BEHAVIOR.

SECTION 5. In Colorado Revised Statutes, **amend** 24-101-201 as follows:

24-101-201. Determinations. Written determinations required by this code shall be retained in the appropriate official ~~contract~~ PROCUREMENT file of the department of personnel or the purchasing agency administering the procurement.

SECTION 6. In Colorado Revised Statutes, **amend with relocated provisions** 24-101-301 as follows:

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

(1) "ACCEPTANCE" MEANS THE ACTION OF CONSENTING TO RECEIVE OR UNDERTAKE SOMETHING OFFERED.

~~(1)~~ (2) "Award" means the ~~acceptance of a bid or proposal and may include the presentation of a proposed written agreement for performance of the contract~~ SELECTION OF A BID OR PROPOSAL BY A GOVERNMENTAL BODY. AN AWARD DOES NOT MEAN THAT A CONTRACT HAS BEEN EXECUTED OR THAT A COMMITMENT VOUCHER HAS BEEN ISSUED PURSUANT TO SECTION 24-30-202.

(3) "BIDDER" MEANS ANY PERSON THAT SUBMITS A BID IN RESPONSE TO AN INVITATION FOR BIDS.

~~(1.5)~~ (4) "Business" means any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(5) "BUSINESS DAY" MEANS ANY DAY OTHER THAN SATURDAY, SUNDAY, OR A LEGAL HOLIDAY.

~~(2)~~ "Change order" means a written order, signed by a procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

(6) "CHIEF PROCUREMENT OFFICER" MEANS THE INDIVIDUAL TO WHOM THE EXECUTIVE DIRECTOR HAS DELEGATED HIS OR HER AUTHORITY PURSUANT TO SECTION 24-102-202 TO PROCURE OR SUPERVISE THE PROCUREMENT OF ALL SUPPLIES AND SERVICES NEEDED BY THE STATE.

~~(3)~~ (7) "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or any other public improvements of any kind to any public real property. For the purposes of this code, "construction" includes capital construction and controlled maintenance, as defined in section 24-30-1301.

(8) "CONTINGENCY-BASED CONTRACT" SHALL HAVE THE SAME MEANING AS SET

FORTH IN SECTION 24-17-203 (1).

~~(4)~~ (9) "Contract" means any type of state agreement, regardless of what it may be called, ~~for the procurement or disposal of supplies, services, or construction~~ BETWEEN A GOVERNMENTAL BODY AND A CONTRACTOR, WHERE THE PRINCIPAL PURPOSE IS TO ACQUIRE SUPPLIES, SERVICES, OR CONSTRUCTION OR TO DISPOSE OF SUPPLIES FOR THE DIRECT BENEFIT OF A GOVERNMENTAL BODY. "CONTRACT" INCLUDES COMMITMENT VOUCHERS AS DESCRIBED IN SECTION 24-30-202.

~~(5)~~ (10) "Contract modification" means any written alteration of ~~specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of a contract accomplished by mutual action of the parties to the~~ IN ACCORDANCE WITH THE TERMS OF THAT contract.

~~(6)~~ (11) "Contractor" means any person having a contract with a governmental body. FOR THE PURPOSES OF THIS CODE, A VENDOR IS CONSIDERED A CONTRACTOR.

(12) **[Formerly 24-110-101 (1)]** "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit or by a public procurement unit with an external procurement ~~activity~~ UNIT.

(13) **[Formerly 24-103-101 (1)]** "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this code and a fee, if any.

~~(7) Repealed.~~

~~(8)~~ (14) "Department" means the department of personnel.

(15) **[Formerly 24-103-101 (2)]** "Established ~~catalogue~~ CATALOG price" means the price included in a ~~catalogue~~ CATALOG, price list, schedule, or other form that:

(a) Is regularly maintained by a manufacturer or contractor; ~~and~~

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~(9)~~ (16) "Executive director" means the executive director of the department of personnel.

(17) **[Formerly 24-110-101 (2)]** "External procurement ~~activity~~ UNIT" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. AN EXTERNAL PROCUREMENT UNIT INCLUDES ANY PURCHASING COOPERATIVE THAT SATISFIES THE PURPOSES OF THIS CODE AS SET FORTH IN SECTION 24-101-102. An agency of the United States is an external procurement ~~activity~~ UNIT.

~~(10)~~ (18) "Governmental body" means any department, commission, council, board, bureau, committee, institution of higher education, agency, government corporation, or other establishment or official, other than an elected official, of the executive branch of state government in this state; except that

(a) the governing board of each institution of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S., by formal action of the board, and the Colorado commission on higher education, by formal action of the commission, may elect to be excluded from the meaning of "governmental body".

~~(b) (Deleted by amendment, L. 2010, (SB 10-111), ch. 170, p. 603, § 12, effective August 11, 2010.)~~

~~(10.5)~~ (a) (19) "Grant" means the furnishing of assistance, including financial or other means of assistance, by the purchasing agency to any person to support a program authorized by law AN AGREEMENT IN WHICH A GOVERNMENTAL BODY AS GRANTOR TRANSFERS ANYTHING OF VALUE TO A GRANTEE TO CARRY OUT A PUBLIC PURPOSE OF SUPPORT OR STIMULATION AUTHORIZED BY LAW INSTEAD OF ACQUIRING PROPERTY OR SERVICES FOR THE DIRECT BENEFIT OR USE OF THAT GOVERNMENTAL BODY. A GRANT MAY INCLUDE A DISTRIBUTION OF FUNDS.

~~(b) The term "grant" does not include:~~

~~(i) A loan;~~

~~(ii) An award required by the terms of a grant to be awarded in accordance with the purchasing agency's procurement statutes and regulations; or~~

~~(iii) An award whose primary purpose is to procure an end product to satisfy a requirement of the purchasing agency, either in the form of supplies, services, or construction.~~

~~(11) "Head of a purchasing agency" means the director of a purchasing agency created pursuant to section 24-102-204 or 24-102-302 (2) and the principal representative authorized to enter into contracts for capital construction or controlled maintenance pursuant to part 13 of article 30 of this title.~~

~~(12)~~ (20) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids. INVITATION FOR BIDS IS THE COMMONLY USED TERM FOR SOLICITING COMPETITIVE SEALED BIDS AND COMPETITIVE SEALED BEST VALUE BIDS.

(21) "LEGAL HOLIDAY" SHALL HAVE THE SAME MEANING AS DEFINED IN SECTION 24-11-101 (1).

(22) [Formerly 24-110-101 (3)] "Local public procurement unit" means any county, city, county and city, municipality, or other political subdivision of the state, any public agency of any such political subdivision, any public authority, any educational, health, or other institution, and, to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and

construction.

(23) **[Formerly 24-103-101 (3)]** "Low responsible bidder" means any person who has bid in compliance with the invitation ~~to bid~~ FOR BIDS and within the requirements of the plans and specifications for a public contract who is the low bidder and who has furnished bonds or their equivalent if required by law.

(24) **[Formerly 24-103-101 (3.5)]** "Low tie bids" means low responsible bids from bidders that are identical in amount and that meet all the requirements and criteria set forth in the invitation for bids pursuant to this code.

(25) "NONRESIDENT BIDDER" MEANS A BIDDER THAT DOES NOT SATISFY THE CRITERIA TO BE A RESIDENT BIDDER.

(26) "OFFEROR" MEANS ANY PERSON THAT SUBMITS A PROPOSAL IN RESPONSE TO A REQUEST FOR PROPOSALS.

~~(13)~~(27) "Person" means any business, individual, union, committee, club, other organization, JOINT VENTURE, or group of individuals.

~~(14)~~(28) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. "Procurement" includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. "PROCUREMENT" ALSO INCLUDES THE PROCUREMENT OF INFORMATION TECHNOLOGY AS DEFINED IN SECTION 24-37.5-102 (2).

~~(15)~~(29) "Procurement officer AGENT" means any person duly authorized to enter into and administer ~~contracts~~ PROCUREMENTS and make written determinations with respect thereto. "Procurement officer AGENT" includes an authorized representative acting within the limits of his OR HER authority.

(30) "PROCUREMENT OFFICIAL" MEANS THE INDIVIDUAL OF A PURCHASING AGENCY WITH PURCHASING AUTHORITY CREATED PURSUANT TO SECTION 24-102-204 OR 24-102-302 (2) OR THE INDIVIDUAL AUTHORIZED TO ENTER INTO CONTRACTS FOR CAPITAL CONSTRUCTION OR CONTROLLED MAINTENANCE PURSUANT TO SECTION 24-30-1303 (5).

(31) **[Formerly 24-103-101 (4)]** "Professional services" means services of accountants, clergy, physicians, lawyers, and dentists and such other services as may be procured through agents of those services, excluding those professional services as defined in section 24-30-1402, as the executive director may by rule designate as professional services.

~~(16)~~ (32) "Public employee" means an individual drawing a salary from a governmental body or a noncompensated individual performing personal services for a governmental body.

(33) **[Formerly 24-110-101 (4)]** "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

(34) **[Formerly 24-103-101 (5)]** "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

~~(17)~~ (35) "Purchasing agency" means any governmental body ~~other than the department of personnel~~ which is authorized to enter into contracts by section 24-102-302 (1) by way of delegation from the executive director pursuant to section 24-102-302 (2) or by the way of delegation from the executive director. ~~pursuant to section 24-102-204.~~

~~(18)~~ (36) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals. REQUEST FOR PROPOSALS IS THE COMMONLY USED TERM FOR SOLICITING COMPETITIVE SEALED PROPOSALS.

(37) **[Formerly 24-103-101 (6)]** "Resident bidder" means:

(a) A person ~~or business~~ that is authorized to transact business in Colorado and that maintains its principal place of business in Colorado; or

(b) A person ~~or business~~ that:

(I) Is authorized to transact business in Colorado;

(II) ~~that~~ Maintains a place of business in Colorado; and ~~that~~

(III) Has ~~filed Colorado unemployment compensation reports in at least seventy-five percent of the eight quarters immediately before bidding on a contract~~ PAID COLORADO UNEMPLOYMENT COMPENSATION TAXES IN AT LEAST SIX OF THE EIGHT QUARTERS IMMEDIATELY PRIOR TO BIDDING ON A CONSTRUCTION CONTRACT FOR A PUBLIC PROJECT.

(38) "RESPONSIBLE" MEANS THE CAPABILITY IN ALL RESPECTS TO PERFORM FULLY THE CONTRACT REQUIREMENTS AND THE INTEGRITY AND RELIABILITY THAT WILL ASSURE GOOD FAITH PERFORMANCE.

(39) "RESPONSIVE" MEANS A BID OR PROPOSAL THAT MEETS THE SPECIFICATIONS, ACCEPTABILITY REQUIREMENTS, AND TERMS AND CONDITIONS OF THE SOLICITATION AND THAT USES THE FORM PRESCRIBED BY THE PURCHASING AGENCY.

~~(19)~~ (40) "Rules" means state procurement rules and has the same meaning as provided in section 24-4-102 (15).

(41) "SEALED" MEANS A BID OR PROPOSAL SUBMITTED IN A MANNER THAT:

(a) ENSURES THAT THE CONTENTS OF THE BID, PROPOSAL, OR BEST VALUE BID CANNOT BE OPENED OR VIEWED BEFORE THE FORMAL BID OPENING WITHOUT LEAVING EVIDENCE THAT THE DOCUMENT HAS BEEN OPENED OR VIEWED;

(b) ENSURES THAT THE DOCUMENT CANNOT BE CHANGED, ONCE RECEIVED BY THE STATE, WITHOUT LEAVING EVIDENCE THAT THE DOCUMENT HAS BEEN CHANGED;

(c) BEARS A PHYSICAL OR ELECTRONIC SIGNATURE, AS ELECTRONIC SIGNATURE IS DEFINED IN THE "UNIFORM ELECTRONIC TRANSACTIONS ACT", SECTION 24-71.3-102 (8), EVINCING AN INTENT BY THE BIDDER OR OFFEROR TO BE BOUND; AND

(d) RECORDS, MANUALLY OR ELECTRONICALLY, THE DATE AND TIME THE BID OR PROPOSAL IS RECEIVED BY THE STATE AND THAT CANNOT BE ALTERED WITHOUT LEAVING EVIDENCE OF THE ALTERATION.

~~(20)~~ (42) "Services" means the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term does not include professional services as defined in section 24-30-1402.

~~(21) (Deleted by amendment, L. 96, p. 1533, § 98, effective June 1, 1996.)~~

(43) "SOLICITATION" MEANS ALL DOCUMENTS AND RELATED INFORMATION, WHETHER ATTACHED OR INCORPORATED BY REFERENCE, PUBLISHED ON AN ELECTRONIC BIDDING SYSTEM IN CONNECTION WITH A PROCUREMENT PRIOR TO THE RESPONSE DEADLINE.

(44) [Formerly 24-104-101 (1)] "Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(45) [Formerly 24-110-101 (5)] "State public procurement unit" means the department of personnel or any other purchasing agency of this state.

(46) "STATEMENT OF WORK" MEANS A DOCUMENT THAT DEFINES SPECIFIC ACTIVITIES AND DELIVERABLES AND THEIR RESPECTIVE TIMELINES, ALL OF WHICH FORM A CONTRACTUAL OBLIGATION UPON THE VENDOR IN PROVIDING SERVICES TO THE STATE.

~~(22)~~ (47) "Supplies" means all property, including but not limited to equipment, materials, and insurance. The term does not include land, the purchase of an interest in land, water or mineral rights, workers' compensation insurance, benefit insurance for state employees, or property furnished in connection with public printing, as defined in section 24-70-201.

~~(23)~~ (48) "Using agency" means any governmental body of the state which utilizes any supplies, services, or construction procured under this code.

SECTION 7. In Colorado Revised Statutes, 24-101-401, **amend** (1) as follows:

24-101-401. Public access to procurement information - repeal. (1) Except as provided in ~~section 24-103-203 (4), procurement information is a public record and is available to the public~~ SECTION 24-103-201.5, PROPOSALS AND BIDS SHALL BE OPENED SO AS TO AVOID DISCLOSURE OF THE CONTENTS OF THE PROPOSAL OR BID TO COMPETING OFFERORS DURING THE REVIEW PROCESS. A REGISTER OF PROPOSALS AND BIDS SHALL BE PREPARED IN ACCORDANCE WITH RULES AND SUCH

PROCUREMENT RECORDS SHALL BE OPEN FOR PUBLIC INSPECTION AFTER THE AWARD as provided in sections 24-72-203 and 24-72-204. THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES TO CLARIFY THE PROCESS FOR CLASSIFYING CONFIDENTIAL OR PROPRIETARY INFORMATION IN PROCUREMENT RECORDS.

SECTION 8. In Colorado Revised Statutes, **amend** 24-102-101 as follows:

24-102-101. Authority and duties of the executive director. Subject to the provisions of ~~part 4~~ PART 2 of this ~~article~~ ARTICLE 102, the executive director of the department of personnel has the authority and responsibility to promulgate rules, consistent with this code, governing the procurement and disposal of any and all supplies, services, and construction to be procured by the state, except for surplus state property as provided in section 17-24-106.6, ~~C.R.S.~~, and except as provided in part 4 of article 82 of this ~~title~~ TITLE 24. The executive director shall consider and decide matters of policy within the provisions of this code.

SECTION 9. In Colorado Revised Statutes, **amend with relocated provisions** 24-102-202 as follows:

24-102-202. Authority of the executive director and chief procurement officer - delegation of authority - rules. (1) Consistent with the provisions of this code, the executive director may adopt operational procedures governing the internal functions of the department.

(2) (a) ~~[Formerly 24-102-401 (1)] Rules shall be promulgated in accordance with the applicable provisions of section 24-4-103.~~ THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF THIS TITLE 24, IN FURTHERANCE OF THE ADMINISTRATION OF THIS CODE.

(b) ~~[Formerly 24-102-401 (2)]~~ The executive director may delegate his ~~power~~ OR HER AUTHORITY to promulgate rules.

(c) ~~[Formerly 24-102-401 (3)]~~ No rule PROMULGATED PURSUANT TO THIS SECTION shall change any commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

(3) ~~[Formerly 24-102-204]~~ Subject to rules, the executive director may delegate HIS OR HER purchasing authority to designees or to any department, agency, or official.

~~(2)~~ (4) Except as otherwise specifically provided in this code, the ~~executive director~~ CHIEF PROCUREMENT OFFICER shall, pursuant to rules:

(a) Procure or supervise the procurement of all supplies and services needed by the state;

(b) Repealed.

(c) Establish and maintain programs for the inspection, testing, and acceptance of supplies and services;

(d) RETAIN THE RIGHT TO examine each requisition submitted by a using agency and approve, disapprove, or revise it as to quantity or quality;

(e) Develop and maintain programs and procedures to delegate purchasing authority in order to conserve resources for management of the statewide purchasing system; and

(f) Develop programs to evaluate and reduce the administrative costs of the statewide procurement function.

SECTION 10. In Colorado Revised Statutes, 24-102-202.5, **amend** (1), (2)(a), and (2.5) as follows:

24-102-202.5. Supplier database - fees - cash fund - program account.

(1) The executive director shall develop a centralized database that includes a listing of all businesses which are interested in providing goods and services to the state. The businesses in the database shall be identified by a registration number, and the executive director shall develop a procedure for notifying the appropriate businesses whenever the state issues ~~requests for proposals or invitations for bids~~ SOLICITATIONS for goods or services which a particular business provides. The database shall be accessible through the department of personnel to all purchasing agencies designated pursuant to section 24-102-302 (2).

(2) (a) THE EXECUTIVE DIRECTOR MAY REQUIRE each business that wishes to be included in the database created pursuant to subsection (1) of this section ~~shall~~ TO pay a registration fee as determined by the executive director. The executive director ~~shall~~ MAY set and collect such fees as are necessary to cover the direct and indirect costs that are incurred in implementing the provisions of this section. The revenue from such fees shall be transmitted to the state treasurer, who shall credit the same to the supplier database cash fund, which fund is hereby created. The general assembly shall make appropriations from such fund as necessary to implement the provisions of this section. All moneys not expended or encumbered and all interest earned on the investment or deposit of the moneys in the fund shall remain in the fund and shall not revert to the general fund or any other fund at the end of any fiscal year.

(2.5) (a) The executive director shall develop and implement a statewide centralized electronic procurement system to allow the utilization of technology to create a more efficient delivery of state procurement services. The executive director ~~shall~~ MAY set and collect fees from vendors with cooperative purchasing agreements and from local public procurement units ~~as defined in section 24-110-101 (3), and~~ that are participating in the electronic procurement system, as necessary to cover the direct and indirect costs of implementing and maintaining the electronic procurement system. In addition, the executive director may collect moneys from cooperative purchasing organizations for procurement support.

(b) ~~Prior to July 1, 2013, the revenue from the fees and any moneys received from cooperative purchasing organizations pursuant to paragraph (a) of this subsection (2.5) shall be transmitted to the state treasurer, who shall credit the same to the electronic procurement program account, which is hereby created within the supplier database cash fund created in paragraph (a) of subsection (2) of this~~

section. The moneys in the account shall be annually appropriated by the general assembly for the purposes of implementing and maintaining the electronic procurement system. All moneys not expended or encumbered and all interest earned on the investment or deposit of the moneys in the account shall remain in the account and shall not revert to the general fund or any other fund at the end of any fiscal year; except that any unexpended moneys remaining in the account on June 30, 2013, shall be transferred to the supplier database cash fund.

(c) ~~Beginning July 1, 2013,~~ The revenue from the fees and any moneys collected from cooperative purchasing organizations pursuant to ~~paragraph (a) of this subsection (2.5)~~ SUBSECTION (2.5)(a) OF THIS SECTION shall be transmitted to the state treasurer, who shall credit the same to the supplier database cash fund created in ~~paragraph (a) of subsection (2)~~ SUBSECTION (2)(a) of this section.

SECTION 11. In Colorado Revised Statutes, **amend** 24-102-207 as follows:

24-102-207. Statewide procurement card agreement. (1) The department shall establish a statewide procurement card program. All governmental bodies that utilize a procurement card shall participate in the statewide program. For purposes of this section, "governmental body" ~~shall have~~ HAS the same meaning as set forth in ~~section 24-101-301 (10)~~ SECTION 24-101-301 (18); except that, for purposes of this section, "governmental body" ~~shall also include~~ INCLUDES elected officials.

(2) Governmental bodies that are not subject to the "Procurement Code", articles 101 to 112 of this ~~title~~ TITLE 24, or the fiscal rules are subject to this section; except that, on and after December 1, 2010, this section ~~shall~~ DOES not apply to an institution of higher education that has elected to be excluded from the meaning of "governmental body" pursuant to ~~section 24-101-301 (10) (a)~~ SECTION 24-101-301 (18).

(3) The statewide procurement card shall be considered an alternate method of payment and shall not be considered a commitment voucher required by section 24-30-202 (1). Any revenues resulting from the procurement card program shall be deposited as cash revenue in the general fund and shall be subject to annual appropriation by the general assembly. Unless otherwise directed by the general assembly, the state controller shall make adjustments equivalent to such revenues in the form of a reduction of administrative costs allocated to governmental bodies on a basis proportional to each governmental body's contribution to statewide procurement card expenditures, as determined by the state controller, to ensure that the federal government receives its share of procurement card revenues as required by federal regulations and to ensure that the indirect obligations are funded. Institutions of higher education that elect to be excluded from the meaning of "governmental body" pursuant to ~~section 24-101-301 (10) (a)~~ SECTION 24-101-301 (18) shall transfer money to the department of higher education or the Colorado commission on higher education to the extent required to pay indirect cost assessments, as defined in section 24-75-112 (1)(f). For purposes of this subsection (3) the term "allocated" does not mean an appropriation or cash transfer to any governmental body, but refers to an internal process within the office of the state controller.

SECTION 12. In Colorado Revised Statutes, **amend** 24-102-302 as follows:

24-102-302. Purchasing agencies - establishment - authority. (1) Capital construction and controlled maintenance, as defined and delegated to ~~principal representatives~~ A PROCUREMENT OFFICIAL by part 13 of article 30 of this ~~title~~ TITLE 24, shall be procured by such ~~principal representatives~~ PROCUREMENT OFFICIAL as the appropriate purchasing agency.

(2) If the executive director OR HIS OR HER DESIGNEE is of the opinion and so certifies in writing that the needs of any governmental body are of such specialized nature and sufficient volume to warrant a purchasing agency for such governmental body, he OR SHE shall authorize the creation of the same. All such purchasing agencies shall operate under the provisions of this code and the rules promulgated pursuant thereto and shall be subject to the supervision and control of the executive director. All such purchasing agencies shall operate under the provisions of section 17-24-111 ~~C.R.S.~~, requiring the purchase of goods and services from the division of correctional industries, and failure of any such purchasing agency to comply with such requirement shall be cause for the executive director to suspend for a period of up to one year at the discretion of the executive director the authority of a purchasing agency created pursuant to this subsection (2) to purchase goods and services. The authority of a purchasing agency to purchase goods and services may also be suspended at the discretion of the executive director. The financial and staff resources dedicated to the purchasing function in the affected agency shall be under the authority of the department of personnel during the period of suspension, and purchases made for the affected agency shall be in accordance with the requirements of section 17-24-111 (1). ~~C.R.S.~~

(3) ~~The heads of purchasing agencies~~ PROCUREMENT OFFICIALS responsible for procuring the supplies, services, or construction delegated to them by subsections (1) and (2) of this section shall conduct procurements in accordance with the provisions of this code and its implementing rules. The executive director ~~shall~~ MAY establish a standard supplier's form and a standard set of procedures that each purchasing agency shall use in accepting the form and evaluating the supplier. ~~Each purchasing agency created pursuant to this section shall submit a quarterly report to the executive director regarding the quantity and type of goods and services procured during the prior quarter. Such report shall include a description of any instance where a contractor failed to deliver a good or service in accordance with the provisions of the contract. The reporting requirements established in this subsection (3) shall be in addition to and not in lieu of any other reporting requirements established in this code.~~

SECTION 13. In Colorado Revised Statutes, **amend** 24-102-501 as follows:

24-102-501. Collection of data concerning public procurement. All using agencies shall furnish such reports as the ~~executive director~~ CHIEF PROCUREMENT OFFICER may require concerning usage, needs, and stocks on hand, and the executive director shall have authority to prescribe forms to be used by the using agencies in the requisitioning, ordering, and reporting of supplies, services, and construction.

SECTION 14. In Colorado Revised Statutes, **amend** 24-103-201 as follows:

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:

~~(a)~~ SECTION 24-103-202, CONCERNING AWARDS SOLICITED BY AN INVITATION FOR BIDS;

~~(a)~~ (b) Section 24-103-203, concerning awards ~~by competitive sealed proposals~~ SOLICITED BY A REQUEST FOR PROPOSALS;

~~(a.5)~~ (c) Section 24-103-202.3, concerning ~~competitive sealed best value bidding~~ AWARDS SOLICITED BY AN INVITATION FOR BEST VALUE BIDS;

~~(b)~~ (d) Section 24-103-204, concerning small purchases;

~~(c)~~ (e) Section 24-103-205, concerning sole source procurements;

~~(d)~~ (f) Section 24-103-206, concerning emergency procurements;

~~(e)~~ (g) Part 14 of article 30 of this ~~title~~ TITLE 24, concerning architect, engineer, landscape architect, and land surveying services;

~~(f)~~ (h) Section 24-103-208, concerning other procurement methods; OR

~~(g)~~ (i) Part 2 of article 38 of this ~~title~~ TITLE 24, concerning public-private initiatives.

SECTION 15. In Colorado Revised Statutes, **add** 24-103-201.5 as follows:

24-103-201.5. Market research - request for information. (1) A PROCUREMENT OFFICIAL MAY CONDUCT MARKET RESEARCH PRIOR TO SELECTING A METHOD OF SOURCE SELECTION PURSUANT TO THIS PART 2. THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF THIS TITLE 24, TO FURTHER DEFINE METHODS OF CONDUCTING MARKET RESEARCH.

(2) A REQUEST FOR INFORMATION MAY BE USED AS A METHOD TO OBTAIN PRELIMINARY INFORMATION ABOUT A MARKET OR TYPE OF AVAILABLE SERVICE OR PRODUCT WHEN THERE IS NOT ENOUGH INFORMATION READILY AVAILABLE TO WRITE AN ADEQUATE SPECIFICATION OR STATEMENT OF WORK. A REQUEST FOR INFORMATION MAY ASK FOR INPUT FROM POTENTIAL VENDORS TO ASSIST THE STATE IN PREPARING A SPECIFICATION OR STATEMENT OF WORK FOR A SUBSEQUENT SOLICITATION AND MAY ASK FOR PRICING INFORMATION ONLY WITH THE PROVISION THAT SUCH INFORMATION WOULD BE SUBMITTED VOLUNTARILY. THE REQUEST FOR INFORMATION MUST CLEARLY STATE THAT NO AWARD WILL RESULT FROM THE REQUEST.

(3) WHEN MARKET RESEARCH HAS BEEN CONDUCTED, THE GOVERNMENTAL BODY IS NOT OBLIGATED TO COMMIT TO A METHOD OF SOURCE SELECTION AND MAY DETERMINE THAT IT WILL NOT PURSUE A PROCUREMENT.

(4) ALL RESPONSES TO REQUESTS FOR INFORMATION ARE CONFIDENTIAL UNTIL

AFTER AN AWARD BASED ON A SUBSEQUENT SOLICITATION HAS BEEN MADE OR UNTIL THE PROCUREMENT OFFICIAL DETERMINES THAT THE STATE WILL NOT PURSUE A SOLICITATION BASED ON THE REQUEST FOR INFORMATION. AFTER SUCH TIME, THE RESPONSES TO A REQUEST FOR INFORMATION SHALL BE OPEN TO PUBLIC INSPECTION IN ACCORDANCE WITH THE PROVISIONS OF THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE 24.

SECTION 16. In Colorado Revised Statutes, 24-103-202, **amend** (1), (6), (7), and (9); and **repeal** (2)(b) as follows:

24-103-202. Invitation for bids. (1) Contracts shall be awarded by ~~competitive sealed bidding~~ SOLICITED BY AN INVITATION FOR BIDS except as otherwise provided in section 24-103-201.

(2) ~~(b) An invitation for bids for a contract for the purchase of supplies shall also state the required procedures and criteria for awarding the contract as provided in section 24-103-202.5 if low tie bids are received.~~

(6) Withdrawal of inadvertently erroneous bids before the award may be permitted pursuant to rules if the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that an error was made. Except as otherwise provided by rules, all decisions to permit the withdrawal of bids based on such bid mistakes shall be supported by a written determination made by the ~~executive director or the head of a purchasing agency~~ CHIEF PROCUREMENT OFFICER OR THE PROCUREMENT OFFICIAL.

(7) The contract shall be awarded with reasonable promptness by written notice to the low responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids, except as otherwise provided for certain low tie bids under ~~section 24-103-202.5~~ SECTION 24-103-902. In the event that all bids for a construction project exceed available funds, as certified by the appropriate fiscal officer, the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsible bidder in order to bring the bid within the amount of available funds; except that the functional specifications integral to completion of the project may not be reduced in scope, taking into account the project plan, design, and specifications and quality of materials.

(9) The provisions of subsections (4), (5), and (6) of this section shall also apply to construction and shall be in addition to any other requirements for ~~competitive sealed bidding~~ AN INVITATION FOR BIDS for construction as provided for in this title TITLE 24.

SECTION 17. In Colorado Revised Statutes, **amend** 24-103-202.3 as follows:

24-103-202.3. Invitation for best value bids. (1) When, pursuant to rules, ~~the state purchasing director, the head of a purchasing agency, or a designee of either officer who is in a higher ranking employment position than a procurement officer~~ THE CHIEF PROCUREMENT OFFICER OR A PROCUREMENT OFFICIAL determines in writing that the use of ~~competitive sealed~~ AN INVITATION FOR best value ~~bidding~~

BIDS is advantageous to the state, a contract may be entered into by competitive sealed SOLICITED BY INVITATION FOR best value bidding BIDS.

(2) An invitation for bids under competitive sealed best value bidding BIDS shall be made in the same manner as provided in section 24-103-202 (2), (3), and (4).

(3) (a) The state purchasing director or the head of a purchasing agency CHIEF PROCUREMENT OFFICER OR PROCUREMENT OFFICIAL may allow a bidder to submit prices for enhancements, options, or alternatives to the base bid for a commodity or service that will result in a product or service to the state having the best value at the lowest cost. The invitation for bids for competitive sealed best value bidding BIDS must clearly state the purchase description of the commodity or service being solicited and the types of enhancements, options, or alternatives that may be bid; except that the functional specifications integral to the commodity or service may not be reduced.

(b) Prices for enhancements, options, or alternatives to the bid may be evaluated by the state purchasing director or the head of a purchasing agency CHIEF PROCUREMENT OFFICER OR PROCUREMENT OFFICIAL to determine whether the total of the bid price and the prices for enhancements, options, or alternatives provide a contract with the best value at the lowest cost to the state. This evaluation shall be made utilizing the rules of the executive director of the department of personnel promulgated pursuant to paragraph (d) of this subsection (3) SUBSECTION (3)(d) OF THIS SECTION.

(c) A contract may be awarded to a bidder where the total amount of a bid price and the prices for enhancements, options, or alternatives of the bidder exceed the total amount of the bid price and the prices for enhancements, options, or alternatives of another bidder if it is determined pursuant to paragraph (b) of this subsection (3) SUBSECTION (3)(b) OF THIS SECTION that the higher total amount provides a contract with the best value at the lowest cost to the state.

(d) The executive director of the department of personnel shall promulgate rules to be utilized by the state purchasing director or the head of a purchasing agency CHIEF PROCUREMENT OFFICER OR PROCUREMENT OFFICIAL in making the evaluation pursuant to paragraph (b) of this subsection (3) SUBSECTION (3)(b) OF THIS SECTION. The rules shall provide:

(I) Criteria for objectively measuring prices for enhancements, options, or alternatives to a bid, including relevant formulas or guidelines;

(II) Criteria for objectively determining whether the prices for enhancements, options, or alternatives provide the best value at the lowest cost to the state.

(4) The contract shall be awarded with reasonable promptness by written notice to the low responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids except as otherwise provided for certain low tie bids under section 24-103-202.5 PROVIDES FOR A CONTRACT WITH THE BEST VALUE AT THE LOWEST COST TO THE STATE.

SECTION 18. In Colorado Revised Statutes, 24-103-203, amend (1), (7), and

(8); and **repeal** (4) as follows:

24-103-203. Requests for proposals. (1) ~~When, pursuant to rules, the executive director, the head of a purchasing agency, or a designee of either officer who is in a higher ranking employment position than a procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state; A contract may be entered into by competitive sealed~~ REQUESTS FOR PROPOSALS. ~~Competitive sealed~~ REQUESTS FOR PROPOSALS may be used for the procurement of professional services. ~~whether or not the determination described by this subsection (1) has been made.~~ The executive director may provide by rule that it is neither practicable nor advantageous to the state to procure specified types of supplies, services, or construction by ~~competitive sealed bidding~~ AN INVITATION FOR BIDS.

(4) ~~Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with rules and shall be open for public inspection after the contract award subject to the provisions of sections 24-72-203 and 24-72-204.~~

(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 any protest made in connection with the proposal has 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.

(8) The procurement ~~officer~~ OFFICIAL, OR HIS OR HER DESIGNEE, shall negotiate, in the case of procurement of professional services, with the highest qualified offerors and in that negotiation shall take into account, in the following order of importance, the professional competence of the offerors, the technical merits of the offers, and the price for which the services are to be rendered.

SECTION 19. In Colorado Revised Statutes, **amend** 24-103-205 as follows:

24-103-205. Sole source procurement. A contract may be awarded for a supply, service, or construction item without competition when, under rules, the executive director, the ~~head of a purchasing agency~~ CHIEF PROCUREMENT OFFICER, THE PROCUREMENT OFFICIAL, or a designee of ~~either~~ ANY SUCH officer ~~who is in a higher ranking employment position than a procurement officer~~ determines in writing that there is only one source for the required supply, service, or construction item. ~~Sole source procurement provisions shall not be used when the goods or services needed are available through the division of correctional industries unless the purchasing agency specifies the division of correctional industries as the sole source provider.~~

SECTION 20. In Colorado Revised Statutes, **amend** 24-103-206 as follows:

24-103-206. Emergency procurements. Notwithstanding any other provision of this code, the executive director, THE CHIEF PROCUREMENT OFFICER, the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL, or a designee of ~~either~~ ANY SUCH

officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, as defined in rules, but such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

SECTION 21. In Colorado Revised Statutes, **amend** 24-103-301 as follows:

24-103-301. Cancellation of invitations for bids or requests for proposals. An invitation for bids, a request for proposals, or any other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part ~~as may be specified in the solicitation~~ AT ANY TIME BEFORE A CONTRACT IS EXECUTED when it is in the best interests of the state pursuant to rules. The reasons therefor shall be made part of the contract file BUT SHALL REMAIN CONFIDENTIAL AND SHALL NOT BE SUBJECT TO THE PROVISIONS OF THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE 24, FOR THE LESSER OF SIX MONTHS OR UNTIL THE CONTRACT AT ISSUE IS AWARDED.

SECTION 22. In Colorado Revised Statutes, **amend** 24-103-402 as follows:

24-103-402. Prequalification of suppliers. Prospective suppliers may be prequalified for particular types of supplies, services, and construction, and the method of compiling and soliciting from ~~such mailing~~ lists of potential contractors shall MAY be pursuant to rules.

SECTION 23. In Colorado Revised Statutes, 24-103-403, **amend** (1) and (3)(b); and **repeal** (2) as follows:

24-103-403. Cost or pricing data. (1) A contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of his OR HER knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:

(a) The pricing of any contract awarded by ~~competitive sealed~~ REQUESTS FOR PROPOSALS AS SPECIFIED IN section 24-103-203, or pursuant to the sole source procurement authority AS SPECIFIED IN section 24-103-205, where the total contract price is expected to exceed an amount established by rule; or

(b) The pricing of any ~~change order or~~ contract modification which is expected to exceed an amount established by rule.

(2) ~~Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the state, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties.~~

(3) The requirements of this section need not be applied to any contract in which:

(b) The contract price is based on established ~~catalogue~~ CATALOG prices or market prices;

SECTION 24. In Colorado Revised Statutes, **amend** 24-103-701 as follows:

24-103-701. Finality of determinations. The determinations required by ~~sections 24-103-202 (6), 24-103-203 (1) and (7), 24-103-205, 24-103-206, 24-103-401 (1), 24-103-403 (3), 24-103-501, 24-103-502, and 24-103-503 (2)~~ THIS CODE are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

SECTION 25. In Colorado Revised Statutes, 24-103-803, **amend** (3) and (4); and **repeal** (2)(b) as follows:

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

(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;~~

(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.~~ PURSUANT TO RULES PROMULGATED BY THE EXECUTIVE DIRECTOR.

(4) A nonprofit agency's self-certified vendor status is valid for ~~one year~~ UP TO FIVE YEARS 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, AT A TIME AND IN A MANNER DETERMINED BY THE DEPARTMENT, for self-certified vendor status to be eligible to respond to a set aside solicitation pursuant to this part 8.

SECTION 26. In Colorado Revised Statutes, **amend** 24-103-804 as follows:

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.~~ THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES REGARDING THE PROCESS FOR REVIEW, DETERMINATIONS, AND PUBLICATION OF A LIST THAT SHALL BE REFERRED TO AS THE SERVICES SET ASIDE LIST.

(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 August 5, 2008, 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.~~

SECTION 27. In Colorado Revised Statutes, 24-103-805, **amend** (1), (5), (6), and (7) as follows:

24-103-805. Contract set asides - bid process created by department of personnel - obligation of state agencies - rules. (1) (a) 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)~~ RULES PROMULGATED BY THE EXECUTIVE DIRECTOR.

~~(a)~~ (b) If two or more self-certified vendors bid on the solicitation for the services, the ~~purchasing director of the state agency~~ PROCUREMENT OFFICIAL shall award a contract to one of the self-certified vendors based on ~~a competitive price determination~~ WHICH ACCEPTABLE RESPONSE IS MOST ADVANTAGEOUS TO THE STATE TAKING INTO CONSIDERATION FACTORS OTHER THAN PRICE ALONE.

~~(b)~~ (c) If one self-certified vendor bids on the solicitation for the services, the ~~purchasing director of the state agency~~ PROCUREMENT OFFICIAL 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)~~ (d) 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.

(5) The department of personnel ~~shall~~ MAY 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~~ TITLE 24.

(6) Any ~~state agency~~ SELF-CERTIFIED VENDOR that has BEEN awarded a solicitation for services ~~to a self-certified vendor~~ BY A STATE AGENCY pursuant to this part 8 shall report to the ~~department of personnel~~ CHIEF PROCUREMENT OFFICER regarding the progress of the ~~solicitation~~ AWARD AND THE CONTRACT in a manner and frequency to be determined by the ~~department of personnel~~ CHIEF PROCUREMENT OFFICER. THE VENDOR SHALL INCLUDE IN THE REPORT 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.

(7) Any ~~state agency~~ that awards a services solicitation to a self-certified vendor pursuant to this part 8 ~~shall include in the contract with such self-certified vendor the requirement that the vendor~~ must maintain the requirements to be a self-certified vendor pursuant to section 24-103-803 (2) for the DURATION OF THE SERVICES SET ASIDE LIST AND FOR THE entire term of ~~the~~ ANY contract RESULTING FROM THE SERVICES SET ASIDE LIST.

SECTION 28. In Colorado Revised Statutes, **add with amended and relocated provisions** part 9 to article 103 of title 24 as follows:

PART 9 PROCUREMENT PREFERENCES AND GOALS

24-103-901. Procurement preferences and goals. THE PROCUREMENT PREFERENCES AND GOALS SPECIFIED IN THIS PART 9 APPLY TO THE AWARD OF CONTRACTS UNDER THIS CODE.

24-103-902. [Formerly 24-103-202.5] Low tie bids - award procedure and determination - bid preference. (1) If low tie bids are received in response to an invitation for bids for a supply contract, the following procedures are required:

(a) If the low tie bids are from a resident bidder and a nonresident bidder, the resident bidder shall be given preference over the nonresident bidder;

(b) If the low tie bids are from resident bidders, the procurement ~~officer~~ AGENT shall:

(I) Use a fair and reasonable procedure for determining which bidder receives the contract award that at a minimum provides for the presence, at the time and place the determination is made, of the bidders or the bidders' representatives and an impartial witness designated by the procurement ~~officer~~ AGENT who is not an employee of that procurement ~~officer's~~ AGENT'S agency; and

(II) Give the bidders at least five business days' written notice by certified mail of the date the determination will be made, of the procedure for making the

determination, and that the bidders or the bidders' representatives may be present when the determination is made;

(c) If the low tie bids are only from nonresident bidders, the procurement officer ~~AGENT shall follow the procedures in subparagraphs (I) and (II) of paragraph (b) of this subsection~~ (1) SUBSECTIONS (1)(b)(I) AND (1)(b)(II) OF THIS SECTION;

(d) All other applicable provisions of the code that are not inconsistent with this section shall be followed.

(2) If the procurement officer ~~AGENT~~ determines that compliance with this section will cause denial of federal moneys that would otherwise be available or would otherwise be inconsistent with federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal law.

24-103-903. [Formerly 24-103-207] State purchases of recycled paper and recycled products - definitions. (1) When purchasing paper and paper products, ~~the executive director or any purchasing agent~~ PROCUREMENT AGENT shall, whenever the price is competitive and the quality adequate for the purpose intended, purchase recycled paper, as defined in section 13-1-133 (4)(d). ~~C.R.S.~~

(2) For the fiscal year 1990-91, the executive director shall establish as a goal that at least ten percent of the total volume of paper and paper products purchased by the state shall contain recycled paper. The goal shall increase to twenty percent for the fiscal year 1991-92, to thirty percent for the fiscal year 1992-93, to forty percent for the fiscal year 1993-94, and to fifty percent for the fiscal year 1994-95, and for each fiscal year thereafter.

(3) Each agency using recycled paper may print the notation "printed on recycled stock" on any paper or paper product which has been certified by the division as recycled paper.

(4) For purposes of this section, "paper and paper products" means paper items, including but not limited to paper napkins, towels, corrugated and other cardboard, toilet tissue, high-grade office paper, newsprint, offset paper, bond paper, xerographic bond paper, mimeo paper, and duplicator paper.

(5) When purchasing any product with public funds, ~~the executive director or any purchasing agent~~ PROCUREMENT AGENT shall be authorized to purchase products or materials with recycled content, that have been source-reduced, that are reusable, or that have been composted, unless one or more of the following conditions exist:

(a) The product is not available within a reasonable period of time;

(b) The product fails to meet existing purchasing rules, including specifications;
or

(c) The product fails to meet federal or state health or safety standards, as set forth in the code of federal regulations or the Colorado code of regulations.

(6) In addition to the requirements set forth in subsections (1), (2), and (5) of this section, the purchasing agent ~~PROCUREMENT AGENT~~ shall be authorized to purchase, when cost-efficient and economically feasible, equipment that results in the reduction of paper usage.

24-103-904. [Formerly 24-103-207.5] Purchasing preference for environmentally preferable products - definitions. (1) As used in this section, unless the context otherwise requires, "environmentally preferable products" means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose. The product comparison may consider such factors as the availability of any raw materials used in the product being purchased and the availability, use, production, safe operation, maintenance, packaging, distribution, disposal, or recyclability of the product being purchased.

(2) All invitations for bids for products shall include language that describes the availability of the purchasing preference for environmental products. In connection with the purchase of products, a governmental body shall award the contract to a bidder who offers environmentally preferable products subject to the conditions specified in subsection (3) of this section unless the specifications used in the solicitation contain environmentally preferable product criteria. This preference does not apply to the purchase of services, including construction services.

(3) The preference specified in subsection (2) of this section shall apply only if all of the following conditions are met and selecting an environmentally preferable product would not otherwise be disadvantageous to the state upon consideration of these conditions, singly or in combination:

(a) The quality of the environmentally preferable products meets the specification of the bid.

(b) The environmentally preferable products are suitable for the use required by the purchasing entity.

(c) Any bidder able to offer environmentally preferable products is able to supply such products in sufficient quantity, as indicated in the invitation for bids.

(d) The bid price for environmentally preferable products does not exceed the lowest bid price for products that are not environmentally preferable by more than five percent.

(e) The head of the governmental body or other official charged by law with the duty to purchase products has made a determination that the governmental body is able to purchase the environmentally preferable products out of the governmental body's existing budget without any further supplemental or additional appropriation.

~~(f) (Deleted by amendment, L. 2008, p. 575, § 1, effective August 5, 2008.)~~

(4) If the bid price for environmentally preferable products exceeds the bid price for products that are not environmentally preferable by more than five percent, a governmental body may award the contract to a bidder who offers environmentally

preferable products where the governmental body demonstrates, on the basis of assessments such as the costs of ownership and a life-cycle analysis, that long-term savings to the state will result from environmentally preferable purchasing in accordance with the requirements of this section. Nothing in this section shall require that a governmental body perform an analysis of the costs of ownership or a life-cycle analysis in connection with the purchase of any products.

(5) (a) Any bidder that seeks to qualify for the preference created by subsection (2) of this section shall provide documentation to the governmental body inviting the bid that the products offered by the bidder are environmentally preferable. This requirement may be satisfied by submission of any of the following:

(I) A life-cycle analysis conducted on the applicable product that has been conducted in accordance with applicable standards as determined by the purchasing governmental body or by the international organization for standardization or any successor organization;

(II) A reference to an existing environmentally preferable product list maintained by a state or the federal government that contains the product; or

(III) A reference to a nationally recognized third-party certification entity that has certified the product as environmentally preferable on the basis of a valid life-cycle analysis. The governor's energy office or successor office shall maintain a list of certification entities.

(b) The governmental body may rely in good faith on any form of documentation that satisfies the requirement of ~~paragraph (a) of this subsection (5)~~ SUBSECTION (5)(a) OF THIS SECTION.

(c) Notwithstanding any other provision of this section, if none of the forms of documentation specified in ~~paragraph (a) of this subsection (5)~~ SUBSECTION (5)(a) OF THIS SECTION apply to the product being purchased, the requirements of this section shall not apply to the purchase of the product.

~~(6) A governmental body shall report to the joint budget committee of the general assembly the results of any analysis of the costs of ownership and life-cycle analysis used to justify the purchase of any environmentally preferable products in accordance with the requirements of subsection (4) of this section during the previous fiscal year.~~

~~(7)~~ (6) In connection with any cost of ownership analysis or life-cycle analysis undertaken in connection with any purchase under this section of a product that involves the replacement of existing electrical, natural gas, or steam service, the cost analysis shall consider any stranded utility costs.

24-103-905. [Formerly 24-103-211] Service-disabled veteran-owned small businesses - state procurement preference - definitions. (1) As used in this section, unless the context otherwise requires:

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

(I) Incorporated or organized in the state or that is maintaining a place of business or office in the state; and

(II) Officially registered and verified as a service-disabled veteran-owned small business by the ~~center for veterans enterprise~~ CENTER FOR VERIFICATION AND EVALUATION within the United States department of veterans affairs.

(b) "State agency" means a principal department of the executive branch of state government as specified in section 24-1-110, including any division, office, agency, or other unit created within a principal department, including institutions of higher education and the Colorado commission on higher education; except that "state agency" does not include those entities that have elected to be exempt from the code pursuant to section 24-101-105 (1)(b).

(2) In awarding all contracts that are subject to this code, the state shall have the goal of awarding at least three percent of all such contracts, by dollar value, to service-disabled veteran-owned small businesses. To satisfy this goal, a state agency may grant a preference for service-disabled veteran-owned small businesses.

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

(4) On or before September 30, 2015, and on or before September 30 each year thereafter, the executive director shall submit a report regarding the state's progress in satisfying the three percent goal established in this section to the department of military and veterans affairs, the members of the Colorado board of veterans affairs, and to the members of the committees of the house of representatives and the senate that have jurisdiction over state affairs and veterans affairs. The report shall include the following:

(a) The total number of contracts that all state agencies awarded to service-disabled veteran-owned small businesses in the prior fiscal year and the number of such contracts that each state agency awarded;

(b) The total dollar amount of contracts that all state agencies awarded to service-disabled veteran-owned small businesses in the prior fiscal year and the percentage that such dollar amount bears to the total dollar amount of contracts awarded by all state agencies in the prior fiscal year; AND

(c) The total dollar amount of contracts that each state agency awarded to service-disabled veteran owned small businesses in the prior fiscal year and the percentage that such dollar amount bears to the total dollar amount of contracts awarded by the state agency in the prior fiscal year. ~~and~~

~~(d) The total number of service-disabled veteran owned small businesses that responded to solicitation for bids or proposals issued by all state agencies in the prior fiscal year and the total number of such businesses that responded to solicitations for bids or proposals issued by each state agency.~~

24-103-906. [Formerly 8-18-101] Bid preference - state contracts.

(1) (a) Except as provided in ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF THIS SECTION and in ~~section 8-18-103~~ SECTION 24-103-907, when a contract for commodities or services is to be awarded to a bidder, a resident bidder ~~as defined in section 8-19-102 (2)~~ shall be allowed a preference against a nonresident bidder equal to the preference given or required by the state in which the nonresident bidder is a resident.

(b) Notwithstanding ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION, when an invitation for bids for a contract for the purchase of commodities results in a low tie bid, ~~as defined in section 24-103-101, C.R.S.~~, the provisions of ~~section 24-103-202.5, C.R.S.~~ SECTION 24-103-902, apply.

(c) For the purposes of this subsection (1), "commodities" includes supplies as defined in ~~section 24-101-301 (22), C.R.S.~~ SECTION 24-101-301 (47).

(2) If it is determined by the ~~officer~~ PROCUREMENT AGENT responsible for awarding the bid that compliance with this section may cause denial of federal moneys which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements.

~~(3) This section applies to contracts governed by the procurement code in articles 101 to 112 of title 24, C.R.S.~~

24-103-907. [Formerly 8-18-103] Preference for state agricultural products.

(1) When purchasing agricultural products, a governmental body ~~as defined in section 24-101-301 (10), C.R.S.~~, shall award the contract to a resident bidder ~~as defined in section 8-19-102 (2)~~, who produces products in the state, subject to the conditions in subsection (2) of this section.

(2) The preference in subsection (1) of this section shall apply only if the following conditions are met:

(a) The quality of available products produced in the state is equal to the quality of products produced outside the state;

(b) Available products produced in the state are suitable for the use required by the purchasing entity;

(c) The resident bidder is able to supply products produced in the state in sufficient quantity, as indicated in the invitation for bids; and

(d) (I) The resident bidder's bid or quoted price for products produced in the state does not exceed the lowest bid or price quoted for products produced outside the state or the resident bidder's bid or quoted price reasonably exceeds the lowest bid or price quoted for products produced outside the state.

(II) For purposes of this ~~paragraph (d)~~ SUBSECTION (2)(d), "reasonably exceeds" shall occur when the head of the governmental body, or other public officer charged

by law with the duty to purchase such products, at his or her sole discretion, determines such higher bid to be reasonable and capable of being paid out of that governmental body's existing budget, without any further supplemental or additional appropriation.

(3) (a) For purposes of this section, an agricultural product is produced in the state if it is grown, raised, or processed in the state.

(b) A resident bidder that seeks to qualify for the preference created by subsection (1) of this section shall certify to the governmental body inviting the bid and provide documentation confirming that the resident bidder's agricultural product was produced in the state. The governmental body may rely in good faith on such certification and documentation.

~~(4) A governmental body shall report to the joint budget committee of the general assembly, or any successor committee, any cost increases associated with the provisions of this section during the previous fiscal year.~~

~~(5) This section shall apply to contracts governed by the "Procurement Code" in articles 101 to 112 of title 24, C.R.S.~~

24-103-908. Bid preferences - resident bidder - public projects - report - federal and state law - definitions. (1) ~~[Formerly 8-19-102]~~ As used in this ~~article~~ SECTION, unless the context otherwise requires,

~~(1) "Nonresident bidder" means a bidder that does not satisfy the criteria to be a resident bidder.~~

~~(2) "public project" means:~~

~~(a) Any public project as defined in section 24-92-102 (8), C.R.S.; including any such project awarded by any county, including any home rule county, municipality, as defined in section 31-1-101 (6), C.R.S.; school district, special district, or other political subdivision of the state;~~

~~(b) Any publicly funded contract for construction entered into by a governmental body of the executive branch of this state which is subject to the "Procurement Code", articles 101 to 112 of title 24, C.R.S. THIS CODE; and~~

~~(c) Any highway or bridge construction, whether undertaken by the department of transportation or by any political subdivision of this state, in which the expenditure of funds may be reasonably expected to exceed fifty thousand dollars.~~

~~(3) "Resident bidder" means:~~

~~(a) A person, partnership, corporation, or joint venture which is authorized to transact business in Colorado and which maintains its principal place of business in Colorado; or~~

~~(b) A person, partnership, corporation, or joint venture which:~~

~~(I) Is authorized to transact business in Colorado;~~

~~(II) Maintains a place of business in Colorado; and~~

~~(III) Has paid Colorado unemployment compensation taxes in at least six of the eight quarters immediately prior to bidding on a construction contract for a public project.~~

(2) (a) **[Formerly 8-19-101 (1)]** When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident.

(b) **[Formerly 8-19-101 (2)]** If it is determined by the ~~officer~~ PROCUREMENT AGENT responsible for awarding the bid that compliance with this section may cause denial of federal moneys which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements.

(3) (a) **[Formerly 8-19-104 (1)]** The executive director of the department of personnel, or the executive director's designee, shall USE A NATIONAL REGISTRY OF BIDDING PREFERENCES PUBLISHED BY ANOTHER STATE OR NATIONAL ORGANIZATION OR SHALL conduct a survey and compile the results into a list of which states provide a bidding preference on public works contracts for their resident bidders. The list must include details on the type of preference provided by each state, the amount of the preference, and how the preference is applied. The executive director shall complete the initial list on or before July 1, 2014, shall update the list periodically as needed but at least on an annual basis, and shall make the list available to the public on the department's website.

(b) **[Formerly 8-19-104 (2)]** In any bidding process for public works in which a bid is received from a bidder who is not a resident bidder and who is from a state that provides a percentage bidding preference to resident bidders of that state, a comparable percentage disadvantage shall be applied to the bid of that bidder.

(c) **[Formerly 8-19-104 (3)]** Any request for proposals issued by a state agency or political subdivision of the state must include a notice to nonresident bidders that if the nonresident bidder is from a state that provides a bidding preference to bidders from that state, then a comparable percentage disadvantage will be applied to the bid of that nonresident bidder. The notice must also specify that the bidder may obtain additional information from the department of personnel's website.

(d) **[Formerly 8-19-104 (4)]** The executive director of the department of personnel shall MAY promulgate rules necessary for the implementation of this section. Such rules shall be promulgated in accordance with the "State Administrative Procedure Act", article 4 of THIS title 24. ~~C.R.S.~~

(4) **[Formerly 8-19-105]** Nothing in this ~~article~~ SECTION applies to any project that receives federal moneys. In addition, nothing in this ~~article~~ SECTION

contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this ~~article~~ SECTION to the extent of that accordance. The requirements of this ~~article~~ SECTION are suspended if such requirement would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.

24-103-909. [Formerly 8-19.5-101] Bid preference - recycled plastic products. (1) When a contract is to be awarded ~~in a public project~~ PURSUANT TO THIS CODE, a bidder who has used recycled plastics in the manufacture of the commodity or supplies described in the bid shall be allowed a preference of up to five percent for finished products which contain no less than ten percent recycled plastics.

(2) If it is determined by the ~~officer~~ PROCUREMENT AGENT responsible for awarding a bid that compliance with this section may cause denial of federal moneys which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements.

~~(3) For purposes of this section, "public project" means any publicly funded contract entered into by a governmental body of the executive branch of this state which is subject to the "Procurement Code", articles 101 to 112 of title 24, C.R.S.~~

24-103-910. [Formerly 24-103-210] Use of foreign-produced goods - iron, steel, and related manufactured products - disclosure - report - definitions.

(1) The contractor for any public works project that is funded by a state agency as defined in section 24-30-1301 (17) or by a state institution of higher education as defined in section 24-30-1301 (18), that does not receive any federal moneys, and that costs more than five hundred thousand dollars shall, upon completion of the project, make a good faith effort to disclose to the department of personnel the five most costly goods incorporated into the project, including iron, steel, or related manufactured goods; except that, for public projects under the supervision of the department of transportation, the contractor shall disclose such information to the department of transportation.

(2) (a) In the case of an iron or steel product, the product will be considered manufactured in the United States if all of the manufacturing processes for the final product take place in the United States.

(b) In the case of a manufactured good, a good will be considered manufactured in the United States if all of the manufacturing processes for the final product take place in the United States irrespective of the origin of the manufactured good's subcomponents.

(c) In order for a manufactured good to be considered subject to disclosure under this ~~article~~ ARTICLE 103, the product must be manufactured predominantly of steel or iron. The manufactured good is deemed a product manufactured predominantly of steel or iron if the product consists of more than fifty percent steel or iron content

when it is delivered to the job site for installation.

(3) The disclosure must state the total cost and country of origin of the five most costly goods used on a project, including iron, steel, and related manufactured goods described pursuant to subsections (1) and (2) of this section. The contractor may rely on documents provided by third-party vendors when disclosing the country of origin of iron, steel, or related manufactured goods. In addition, the disclosure must state whether the public works project was subject to any existing domestic content preference, including 41 U.S.C. secs. 8301 to 8305, 23 U.S.C. sec. 313, 49 U.S.C. sec. 5323, 49 U.S.C. sec. 24305, 49 U.S.C. sec. 24405, and 49 U.S.C. secs. 50101 to 50105. The contractor shall disclose the information in a manner to be determined by the department.

(4) The department shall issue an annual report detailing the information that contractors submitted to the department and to the department of transportation pursuant to subsections (1) to (3) of this section. The report must include aggregate data collected for the calendar year and analysis of the data broken down by product and public works project type. The report shall not publicly disclose any proprietary information provided by the contractor that is not subject to disclosure pursuant to the "Colorado Open Records Act", part 2 of article 72 of this ~~title~~ TITLE 24. The department shall make the report available to the public on the department's website.

(5) As used in this section, unless the context otherwise requires:

(a) "Country of origin" shall have the meaning ascribed to it under 19 U.S.C. sec. 1304 and 19 CFR 134.

(b) "Public works" shall have the same meaning as "public project" as defined in section 24-92-102 (8)(a).

(c) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

(6) Nothing in this section applies to any project that receives federal moneys. In addition, nothing in this section contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this section to the extent of that accordance. The requirements of this section are suspended if such requirements would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.

SECTION 29. In Colorado Revised Statutes, **amend** 24-104-201 as follows:

24-104-201. Executive director - rules. The executive director ~~shall~~ MAY promulgate rules governing the preparation, maintenance, and content of specifications for supplies, services, and construction required by the state.

SECTION 30. In Colorado Revised Statutes, **amend** 24-104-202 as follows:

24-104-202. Duties of the chief procurement officer - specifications. The

~~executive director~~ CHIEF PROCUREMENT OFFICER shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services, and construction required by the state.

SECTION 31. In Colorado Revised Statutes, **amend** 24-104-204 as follows:

24-104-204. Relationship with using agencies. The ~~executive director~~ CHIEF PROCUREMENT OFFICER may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate, in writing, to a using agency the authority to prepare and utilize its own specifications.

SECTION 32. In Colorado Revised Statutes, **add with amended and relocated provisions** 24-104-208 as follows:

24-104-208. [Formerly 24-103-209] Purchase of compost by governmental bodies - definitions. (1) In addition to any other applicable requirement specified in the code, no compost may be purchased by a governmental body ~~as defined in section 24-101-301~~, unless the compost satisfies minimum standards specified by the department of agriculture.

(2) For purposes of this section, "compost" means a substance derived from a process of biologically degrading organic materials that contains one or more essential available plant nutrients and that complies with minimum standards for the identification of such substance specified by the commissioner of agriculture by rule.

SECTION 33. In Colorado Revised Statutes, **amend** 24-105-101 as follows:

24-105-101. Responsibility for selection of methods of construction contracting management. The executive director ~~shall~~ MAY promulgate rules providing for as many alternative methods of construction contracting management as he OR SHE may determine to be feasible. These rules ~~shall~~ MAY set forth criteria to be used in determining which method of construction contracting management is to be used for a particular project, grant to the head of a division within the department or the ~~head of a purchasing agency which~~ PROCUREMENT OFFICIAL WHO is responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project, and require the procurement ~~officer~~ AGENT to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

SECTION 34. In Colorado Revised Statutes, 24-105-201, **amend** (1) as follows:

24-105-201. Bid security. (1) Bid security shall be required for all ~~competitive sealed bidding~~ INVITATIONS FOR BIDS for construction contracts when the price is estimated by the procurement ~~officer~~ AGENT to exceed fifty thousand dollars. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or otherwise supplied in a form satisfactory to the state. Nothing in this subsection (1) prevents the requirement of such bonds on construction contracts under fifty thousand dollars.

SECTION 35. In Colorado Revised Statutes, 24-105-301, **amend** (1) introductory portion, (2)(a)(V), and (4) as follows:

24-105-301. Contract clauses and their administration. (1) The executive director ~~shall~~ **MAY** promulgate rules requiring the inclusion in state construction contracts of clauses providing for adjustments in prices, time of performance, and other appropriate contract provisions affected by and covering the following subjects:

(2) (a) Adjustments in price shall be computed in one or more of the following ways:

(V) In the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state pursuant to the applicable sections of any rules issued under ~~article 107 of this title~~ SECTION 24-106-108, and subject to the provisions of article 109 of this ~~title~~ TITLE 24.

(4) The contract clauses promulgated under this section ~~shall~~ **MAY** be set forth in rules; except that such rules shall be consistent with section 24-91-103.5 (1) and (2) **AND** SECTION 24-30-1303 (1)(s)(IV). ~~However, the head of a division within the department designated by the executive director or the head of a purchasing agency may vary the clauses for inclusion in any particular state construction contract so long as any variations are supported by a written determination that describes the circumstances justifying such variations and notice of any material variation is stated in the invitation for bids or request for proposals. No variation that is inconsistent with section 24-91-103.5 (1) and (2) shall be made pursuant to this subsection (4).~~

SECTION 36. In Colorado Revised Statutes, **amend** 24-105-302 as follows:

24-105-302. Fiscal responsibility. Every contract modification ~~change order~~, or contract price adjustment under a construction contract with the state in excess of an amount specified in the contract shall be subject to prior written certification by the controller or other official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget as to the effect of the contract modification ~~change order~~, or adjustment in contract price on the total project or contract budget. In the event that the certification of the controller or other responsible official discloses a resulting increase in the total project or contract budget, the procurement ~~officer~~ **AGENT** shall not execute or make such contract modification ~~change order~~, or adjustment in contract price unless sufficient funds are available therefor or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project or contract budget as it existed prior to the contract modification ~~change order~~, or adjustment in contract price under consideration; except that, with respect to the validity of any executed contract modification ~~change order~~, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this section.

SECTION 37. In Colorado Revised Statutes, 24-106-101, **amend** (3)(d) and (4) as follows:

24-106-101. Contract clauses - price adjustments - additional clauses - modification. (3) The executive director may promulgate rules including, but not limited to, rules permitting or requiring the inclusion in state contracts of clauses providing for appropriate remedies and covering the following subjects:

(d) Termination of the contract in whole or in part for the ~~convenience~~ PUBLIC INTEREST of the state.

(4) Any contract clauses promulgated under this section ~~shall~~ MAY be set forth in rules; except that such rules shall be consistent with section 24-91-103.5 (1) and (2). However, the executive director or the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL may vary the clauses for inclusion in any particular state contract so long as any variations are supported by a written determination that describes the circumstances justifying such variations and notice of any material variation is stated in the invitation for bids or request for proposals. No variation that is inconsistent with section 24-91-103.5 (1) and (2) shall be made pursuant to this subsection (4).

SECTION 38. In Colorado Revised Statutes, **add with amended and relocated provisions** 24-106-102, 24-106-103, 24-106-104, 24-106-105, 24-106-106, 24-106-107, and 24-106-108 as follows:

24-106-102. [Formerly 24-101-103] Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity, including the "Uniform Commercial Code", the law merchant, and any law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this code.

24-106-103. [Formerly 24-102-205] Centralized contract management system - personal services contracts - legislative declaration - definitions. (1) (a) The general assembly hereby finds and declares that by enacting this section the general assembly intends to CENTRALIZE THE LOCATION OF INFORMATION ABOUT PERSONAL SERVICES CONTRACTS AND PROVIDE FOR LEGISLATIVE, EXECUTIVE, AND PUBLIC ACCESS TO ALL PERSONAL SERVICES CONTRACTS ENTERED INTO BY ANY GOVERNMENTAL BODY.

~~(I) Establish a policy of open competition for personal services contracts unless the competition is specifically exempted under this section;~~

~~(II) Provide for legislative and executive review of all personal services contracts entered into by any governmental body;~~

~~(III) Centralize the location of information about personal services contracts for the purpose of facilitating public review of such contracts; and~~

~~(IV) Ensure the proper accounting of expenditures for personal services.~~

(b) For purposes of this section, "governmental body" shall have the same meaning as set forth in ~~section 24-101-301(10)~~ SECTION 24-101-301 (18); except that, for purposes of this section, "governmental body" shall also include elected

officials.

~~(c) (Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p. 1852, § 31, effective June 9, 2010.)~~

(2) This section shall apply to any personal services contract to which the state is a party the value of which exceeds one hundred thousand dollars with the exception of any contract to which the state is a party under medicare, the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, ~~C.R.S.~~, the "Children's Basic Health Plan Act", article 8 of title 25.5, ~~C.R.S.~~, or the "Colorado Indigent Care Program", part 1 of article 3 of title 25.5. ~~C.R.S.~~

(3) (a) On or before June 30, 2009, the department shall implement and maintain a centralized contract management system for the purpose of monitoring all personal services contracts entered into by a governmental body that are subject to the requirements of this section. With respect to each contract entered into by a governmental body, information contained in the system shall include, without limitation, the following:

(I) The governmental body that entered into the personal services contract;

(II) The persons or entities with which the governmental body is contracting;

~~(III) The duration and number of positions on the state payroll created directly or indirectly as a result of any personal services contract;~~

~~(IV)~~ (III) The purpose of the personal services contract;

~~(V)~~ (IV) The effective dates, ~~periods of performance~~ EXPIRATION DATES, and any renewal ~~terms~~ PERIODS of the personal services contract;

~~(VI)~~ (V) The vendor selection method upon which the personal services contract was awarded, whether competitively procured, awarded on a sole-source basis, or otherwise. Where the contract has been awarded on a sole-source basis, the governmental body shall certify that the governmental body has followed the requirements of subsection (5) of this section.

~~(VII)~~ (VI) The total ~~value~~ AMOUNT of the personal services contract and any amendments to the contract;

~~(VIII) In accordance with the requirements of subsection (6) of this section, an evaluation following completion of the personal services contract that measures the vendor's performance in meeting contractual requirements relating to quality, cost, and deadlines;~~

~~(IX)~~ (VII) Whether any services under the personal services contract, or any subcontracts to the contract that directly relate to the services provided under the contract, are anticipated to be performed outside the United States or the state as disclosed in the statement of work pursuant to section 24-102-206 and the vendor's justification for obtaining services outside the United States or the state in accordance with the requirements of section 24-102-206; and

~~(X)~~ (VIII) Upon completion of the personal services contract, the extent as disclosed by the vendor to which any services under the contract, or any subcontracts to the contract that directly relate to the services provided under the contract, were performed outside the United States or the state.

(b) Each governmental body shall be responsible for gathering relevant information ~~to be submitted to the department~~ for inclusion in the centralized contract management system in accordance with the requirements of ~~paragraph (a) of this subsection (3)~~ SUBSECTION (3)(a) OF THIS SECTION.

(c) The centralized contract management system required to be maintained by the department pursuant to ~~paragraph (a) of this subsection (3)~~ SUBSECTION (3)(a) OF THIS SECTION shall be a publicly available database of all personal services contracts entered into by any governmental body, accessible from the website maintained by the state. Information concerning contracts contained in the database and accessible on the website shall be searchable by criteria enumerated in subparagraphs (I) to ~~(X)~~ (VIII) of ~~paragraph (a) of this subsection (3)~~ SUBSECTION (3)(a) OF THIS SECTION. Information in the database shall be either presented in plain and nontechnical language or by means of key terms that are clearly and easily defined.

~~(d) The centralized contract management system required to be maintained by the department pursuant to paragraph (a) of this subsection (3) shall identify the number of employment positions to be filled under any personal services contract that was previously performed by classified civil service employees, in addition to the total number of positions, if any, eliminated by the contract. In the case of any contract that is more than one year in duration, the system shall identify the cost savings, if any, and quality improvements, if any, realized by the state as a result of the contract.~~

~~(e)~~ (d) Any new personal services contracts subject to the requirements of this section shall be added to the centralized contract management system maintained by the department pursuant to ~~paragraph (a) of this subsection (3)~~ SUBSECTION (3)(a) OF THIS SECTION not more than thirty days after the execution of the contract.

(4) The centralized contract management system required to be maintained by the department pursuant to ~~paragraph (a) of subsection (3)~~ SUBSECTION (3)(a) of this section shall include information concerning personal services expenditures by the governmental body and types of services. The types of services that may be designated shall include, without limitation, professional technical, nonprofessional support, purchased services, architectural, engineering and construction trades, and professional equipment repair.

~~(5) (a) Subject to the provisions of paragraph (b) of this subsection (5);~~ Prior to entering into a sole-source personal services contract, the governmental body shall attempt to identify competing vendors by placing a notice on the state's ~~bid notification website~~ ELECTRONIC PROCUREMENT SYSTEM for not less than three business days. If the governmental body receives ~~not less than two~~ ANY responses to the notice from qualified and responsible vendors that are able to meet the specifications identified in the notice and that are not otherwise prohibited from bidding on the contract, the sole-source selection method shall not be used.

~~(b) Notwithstanding the requirements of paragraph (a) of this subsection (5), the director of a governmental body or his or her designee may enter into or authorize others to enter into an emergency sole-source personal services contract on behalf of the governmental body where an emergency condition is present and a sole-source personal services contract is necessary to ensure that the required services are obtained in sufficient time to address the emergency. Where the governmental body enters into an emergency sole-source personal services contract pursuant to this paragraph (b), the centralized contract management system required by paragraph (a) of subsection (3) of this section, and any contract file maintained thereunder, shall include a written determination that specifies the basis for the determination that an emergency condition is present and the basis for the selection of the vendor retained to perform the sole-source contract. A sole-source personal services contract authorized pursuant to this paragraph (b) shall be limited to the quantity of personal services and duration necessary to address the emergency.~~

~~(c) For purposes of paragraph (b) of this subsection (5), "emergency condition" means a situation that creates an imminent threat to the public health, welfare, or safety as may arise by reason of, without limitation, a flood, epidemic, riot, catastrophic equipment failure or similar threat to the public health, welfare, or safety as determined by the director of the governmental body or his or her designee.~~

~~(6) Upon the completion of each personal services contract, the governmental body that was a party to the contract shall evaluate the vendor that performed the contract. The evaluation performed by the governmental body shall be submitted to the vendor to allow the vendor to review the evaluation and to submit any comments in response to the evaluation, after which point the evaluation, including any response submitted by the vendor, shall be added to the centralized contract management system maintained by the department pursuant to paragraph (a) of subsection (3) of this section. The evaluation shall become publicly available thirty days after completion of the contract. The evaluation shall measure, without limitation, the performance of the vendor in meeting contractual requirements relating to quality, cost, and deadlines. If the vendor disputes any information contained in the evaluation, the vendor may exercise the contract dispute rights specified in section 24-109-106, 24-109-107, 24-109-201, or 24-109-202. If, upon completion of an appeal filed with the executive director or the Denver district court, as applicable, the vendor is not satisfied with the resolution of the appeal, the vendor may file a rebuttal statement that shall be maintained as part of the vendor evaluation record. The vendor's sole remedy in contesting any evaluation shall be removal of the evaluation, correction of the evaluation, or submission of the rebuttal statement in accordance with the requirements of this subsection (6).~~

~~(7)(a) Commencing on September 30, 2007, until such time as the development of the system created in paragraph (a) of subsection (3) of this section is complete, the department shall provide reports on a quarterly basis to the joint budget committee of the general assembly concerning the status of the development of the system.~~

~~(b) The department shall annually report information on personal services contracts contained in the centralized contract management system created in paragraph (a) of subsection (3) of this section to the standing legislative committees~~

~~of reference in each house of the general assembly with oversight responsibilities over the department's affairs:~~

~~(c) With respect to any sole-source personal services contract identified in the system required to be maintained by the department pursuant to paragraph (a) of subsection (3) of this section, the department shall submit an annual report to the legislative council of the general assembly created in section 2-3-301 (1), C.R.S., concerning any new contract entered into by the state during the prior calendar year. Each report shall describe, without limitation, the following:~~

~~(I) The number and aggregate value of the sole-source personal services contracts for each category of services specified in subsection (4) of this section; and~~

~~(II) The justification provided by the governmental body for the use of the sole-source contracting provisions in section 24-103-205 and the steps taken to determine if a vendor is the only available source for the required supply, service, or construction item.~~

~~(8) The implementation of the database required to be maintained by the department pursuant to paragraph (a) of subsection (3) of this section shall be funded in two phases, with a portion of the funding provided in the 2007-08 state fiscal year, and a portion of the funding provided in the 2008-09 state fiscal year.~~

~~(9) To accomplish the legislative intent underlying subparagraph (III) of paragraph (a) of subsection (1) of this section, the office of contract administration is hereby created in the department, which office shall be funded within existing appropriations.~~

24-106-104. [Formerly 24-103-501] Types of contracts. Subject to the limitations of this section, any type of contract which will promote the best interests of the state may be used; except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A CONTINGENCY-BASED CONTRACT MAY BE USED ONLY UPON APPROVAL BY THE GOVERNOR'S OFFICE OF STATE PLANNING AND BUDGETING PURSUANT TO SECTION 24-17-204. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type of contract or that it is impracticable to obtain the supplies, services, or construction required unless the cost-reimbursement contract is used.

24-106-105. [Formerly 24-103-503] Multiyear contracts. (1) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the state if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and if funds are available for the first year at the time of contracting. If THE CHIEF PROCUREMENT OFFICER DETERMINES THAT EXTENUATING CIRCUMSTANCES EXIST AND AN EXTENSION OF THE CONTRACT BEYOND THE TERM INCLUDED IN THE SOLICITATION IS IN THE BEST INTEREST OF THE GOVERNMENTAL BODY, THEN THE CHIEF PROCUREMENT OFFICER MAY APPROVE A LONGER TERM FOR A REASONABLE TIME BASED ON WHAT IS PRACTICABLE AND NECESSARY GIVEN THE CIRCUMSTANCES. The state shall initiate the renewal or extension of a contract for supplies or services. Payment and performance obligations for succeeding fiscal

years shall be subject to the availability and appropriation of funds therefor.

(2) Prior to the utilization of a multiyear contract, it shall be determined in writing:

(a) That estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) That such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled, and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

24-106-106. [Formerly 24-103-601] Right to audit records. ~~(1) (Deleted by amendment, L. 2007, p. 1237, § 2, effective August 3, 2007.)~~

~~(2) The state shall be entitled to audit the books and records of any contractor or subcontractor under any negotiated contract or subcontract to the extent that the books and records relate to the performance of a state contract or subcontract, if the state is able, in conducting any such audit, to maintain the confidentiality of any information contained in the books and records that is deemed proprietary as determined by the state. Such books and records shall be maintained by the contractor for a period of ~~three~~ SIX years after the date of final payment under the prime contract and by the subcontractor for a period of ~~three~~ SIX years after the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.~~

24-106-107. [Formerly 24-103.5-101] Monitoring of vendor performance - definitions. (1) ~~(a)~~ For purposes of this section, "governmental body" ~~shall have~~ HAS the same meaning as set forth in ~~section 24-101-301 (10)~~ SECTION 24-101-301 (18); except that, for purposes of this section, "governmental body" shall also include elected officials.

~~(b) (Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p. 1853, § 32, effective June 9, 2010.)~~

(2) Each personal services contract entered into pursuant to this code with a value of one hundred thousand dollars or more shall contain:

(a) Performance measures and standards developed specifically for the contract by the governmental body administering the contract. The performance measures and standards shall be negotiated by the governmental body and the vendor prior to execution of the contract and shall be incorporated into the contract. The measures and standards shall be used by the governmental body to evaluate the performance of ~~the governmental body and~~ the vendor under the contract.

(b) An accountability section that requires the vendor to report regularly on

achievement of the performance measures and standards specified in the contract and that allows the governmental body to withhold payment until successful completion of all or part of the contract and the achievement of established performance standards. The accountability section shall include a requirement that payment by the governmental body to the vendor shall be made without delay upon successful completion of all or any part of the contract in accordance with the payment schedule specified in the contract or as otherwise agreed upon by the parties.

(c) Monitoring requirements that specify how the governmental body ~~and the vendor~~ will evaluate ~~each other's~~ THE VENDOR'S performance, including progress reports, site visits, inspections, and reviews of performance data. The governmental body shall use one or more monitoring processes to ensure that the results, objectives, and obligations of the contract are met.

(d) Methods and mechanisms to resolve any situation in which the governmental body's monitoring assessment determines noncompliance, including termination of the contract.

(3) Each governmental body administering the personal services contract shall, within existing resources of the governmental body, designate ~~at least one person~~ A CONTRACT MANAGER WITH SUBJECT MATTER EXPERTISE within the governmental body responsible for ~~monitoring whether the criteria described in subsection (2) of this section are met, whether and to what extent the contract was completed according to the performance schedule specified in the contract, satisfaction of the scope of the vendor's work as specified in the contract, and whether and to what extent the vendor met or exceeded budgetary requirements under the contract~~ DAY-TO-DAY MANAGEMENT OF THE CONTRACT, INCLUDING PERFORMANCE MONITORING.

~~(4) Before the governmental body may enter into a personal services contract, the person selected in subsection (3) of this section shall certify that the proposed performance measures and standards, data sources, and data collection methods provide a valid basis for assessing the vendor's performance.~~

~~(5) (4) In the case of a contract that has been renewed in a subsequent fiscal year, the governmental body shall certify annually whether the vendor on any contract is complying with the terms of the contract. If the governmental body determines that the vendor has not complied with the contract terms, including but not limited to performance standards and measurable outcomes, the state MAY PURSUE REMEDIES IN ACCORDANCE WITH ARTICLE 109 OF THIS TITLE 24 AND shall be entitled to any remedy available under law in the case of contract nonperformance, including but not limited to termination of the contract and the return of any and all payments made to the vendor by the state under the contract; except that the recovery of any moneys by the state shall be reduced by the value of any contractual benefits realized by the state from partial performance by the vendor under the contract. If a vendor is deemed to be in default under any one particular contract with the state, the state may, upon a showing of good cause, declare any or all other contracts it has entered into with the vendor to be in default.~~

~~(6) The centralized contract management system required by section 24-102-205~~

~~(3) (a) shall include such information as will allow the executive director and the governmental body to evaluate the prior record of a particular vendor in meeting performance measures and standards under paragraph (a) of subsection (2) of this section in connection with a personal services contract to which it has been a party. If a particular vendor demonstrates a gross failure to meet such performance measures and standards in connection with one or more contracts to which it has been a party, the executive director, upon the request of and with a showing of good cause by a governmental body, may remove the name of the vendor from the database and prohibit the vendor from bidding on future contracts. Upon a showing of good cause by a vendor or governmental body, the executive director may reinstate the name of the vendor to the database. If a vendor disputes the removal of its name from the database or the prohibition of the vendor from bidding on future contracts, the vendor may exercise the debarment protest and appeal rights specified in section 24-109-105, 24-109-107, 24-109-201, or 24-109-202. If, upon completion of an appeal filed with the executive director or the Denver district court, as applicable, the vendor is not satisfied with the resolution of the appeal, the vendor may file a rebuttal statement that shall be maintained as part of the vendor evaluation record. The vendor's sole remedy in contesting such removal or prohibition shall be reversal of the debarment or submission of the rebuttal statement in accordance with the requirements of this subsection (6).~~

~~(7) (5) Notwithstanding any other provision of this section,~~

~~(a) nothing in this section shall be construed to apply to any contract to which the state is a party under medicare, the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S.; the "Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S.; or the "Colorado Indigent Care Program", part 1 of article 3 of title 25.5, C.R.S.~~

~~(b) The provisions of this section shall not take effect until the centralized contract management system required by section 24-102-205 (3) (a) has been implemented.~~

24-106-108. [Formerly 24-107-101] Administrative rules - cost reimbursement. The executive director may promulgate rules setting forth cost principles which may be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs. ~~except that, if a written determination is approved by a person who is in a higher ranking employment position than a procurement officer, such cost principles may be modified by contract.~~

SECTION 39. In Colorado Revised Statutes, **add** 24-106-109 as follows:

24-106-109. Terms and conditions in contracts. ANY TERM OR CONDITION IN ANY CONTRACT ENTERED INTO BY THE STATE THAT REQUIRES THE STATE TO INDEMNIFY OR HOLD HARMLESS ANOTHER PERSON, EXCEPT AS OTHERWISE AUTHORIZED BY LAW, OR BY WHICH THE STATE AGREES TO BINDING ARBITRATION OR ANY OTHER BINDING EXTRA-JUDICIAL DISPUTE RESOLUTION PROCESS IN WHICH THE FINAL RESOLUTION IS NOT DETERMINED BY THE STATE, OR BY WHICH THE STATE AGREES TO LIMIT LIABILITY OF ANOTHER PERSON FOR BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE PROPERTY OF THE STATE CAUSED BY THE NEGLIGENCE OR

WILLFUL MISCONDUCT OF SUCH PERSON OR SUCH PERSON'S EMPLOYEES OR AGENTS SHALL BE VOID AB INITIO; EXCEPT THAT THE CONTRACT CONTAINING THAT TERM OR CONDITION SHALL OTHERWISE BE ENFORCEABLE AS IF IT DID NOT CONTAIN SUCH TERM OR CONDITION. ALL CONTRACTS ENTERED INTO BY THE STATE, EXCEPT FOR CONTRACTS WITH ANOTHER GOVERNMENT, SHALL BE GOVERNED BY COLORADO LAW NOTWITHSTANDING ANY TERM OR CONDITION TO THE CONTRARY.

SECTION 40. In Colorado Revised Statutes, **add** 24-109-101.1 as follows:

24-109-101.1. Definitions. AS USED IN THIS ARTICLE 109, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AGGRIEVED PARTY" MEANS ANY ACTUAL OR PROSPECTIVE BIDDER, OFFEROR, OR CONTRACTOR WHO BELIEVES THAT HE OR SHE HAS SUFFERED A DENIAL OF LEGAL RIGHTS UNDER THIS CODE IN CONNECTION WITH THE SOLICITATION OR AWARD OF A CONTRACT. FOR PURPOSES OF CONTRACT CONTROVERSIES, AN AGGRIEVED PARTY MAY ALSO BE THE CONTRACTOR.

(2) "MATERIAL ISSUE" MEANS A NONTRIVIAL DEFECT IN THE SOLICITATION OR AWARD THAT WOULD PREJUDICE THE OUTCOME OF THE PROCUREMENT. THE PRESENCE OF MULTIPLE NONMATERIAL ISSUES IN A SOLICITATION OR AWARD DOES NOT CONSTITUTE A MATERIAL ISSUE UNLESS THE AGGRIEVED PARTY CAN ESTABLISH THAT THOSE NONMATERIAL ISSUES TOGETHER WOULD PREJUDICE THE OUTCOME OF THE PROCUREMENT.

SECTION 41. In Colorado Revised Statutes, **add with amended and relocated provisions** 24-109-101.5 as follows:

24-109-101.5. [Formerly 24-109-101] Resolution of controversies. (1) The ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee is authorized to settle and resolve any questions regarding:

- (a) Any protest concerning the solicitation or award of a contract;
- (b) Debarment or suspension from consideration for award of contracts; and
- (c) Any controversy arising between the state and a contractor by virtue of a contract between them, including, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or any other cause for contract modification or rescission.

(2) Any decision of the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee WITH RESPECT TO A MATERIAL ISSUE RAISED IN A PROTEST IS subject to appeal ~~de novo to the executive director or to the district court of the city and county of Denver pursuant to the provisions of this article~~ PURSUANT TO PART 2 OF THIS ARTICLE 109.

(3) EXCEPT FOR APPEALS REFERRED TO THE OFFICE OF ADMINISTRATIVE COURTS PURSUANT TO SECTION 24-109-201, the provisions of section 24-4-105 shall not apply to the administrative procedures established pursuant to this ~~article~~ ARTICLE 109.

SECTION 42. In Colorado Revised Statutes, **amend** 24-109-102 as follows:

24-109-102. Protested solicitations and awards. (1) Any ~~actual or prospective bidder, offeror, or contractor who is~~ aggrieved PARTY in connection with the solicitation or award of a contract may protest to the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee. The protest OF AN INVITATION FOR BIDS OR A REQUEST FOR PROPOSALS shall be submitted in writing TO THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE ~~within seven working~~ TEN BUSINESS days after such aggrieved ~~person~~ PARTY knows or should have known of the facts giving rise thereto. THE PROTEST OF A SMALL PURCHASE SOLICITATION OR AWARD OF CONTRACT SHALL BE SUBMITTED IN WRITING TO THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE WITHIN THREE BUSINESS DAYS, UNLESS THE PROCUREMENT OFFICIAL OTHERWISE EXTENDS THE TIME PERIOD TO TEN BUSINESS DAYS, AFTER SUCH AGGRIEVED PARTY KNOWS OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE THERETO.

(2) The ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee shall have the authority to settle and resolve a protest of an aggrieved ~~bidder, offeror, or contractor, actual or prospective,~~ PARTY concerning the solicitation or award of a contract. A written decision regarding the protest shall be rendered within ~~seven working~~ TEN BUSINESS days after the protest is filed. The decision shall be based on and limited to a review of the MATERIAL issues raised by the aggrieved ~~bidder, offeror, or contractor~~ PARTY and shall set forth each factor taken into account in reaching the decision. This authority shall be exercised pursuant to rules promulgated BY THE EXECUTIVE DIRECTOR to provide for the expeditious resolution of the protest. REMEDIES AWARDED PURSUANT TO THIS DECISION, IF ANY, SHALL BE LIMITED TO THOSE SET FORTH IN PART 5 OF THIS ARTICLE 109.

(3) IF THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE DOES NOT ISSUE A WRITTEN DECISION REGARDING A SOLICITATION OR AWARD WITHIN THE PERIOD SPECIFIED IN THIS ARTICLE 109 OR WITHIN SUCH LONGER PERIOD AS MAY BE AGREED UPON BY THE PROCUREMENT OFFICIAL AND THE AGGRIEVED PARTY, THEN THE AGGRIEVED PARTY MAY PROCEED AS IF THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE HAD RENDERED AN ADVERSE DECISION.

SECTION 43. In Colorado Revised Statutes, **recreate and reenact, with amendments,** 24-109-103 as follows:

24-109-103. Stay of procurements. A CONTRACT RESULTING FROM A REQUEST FOR PROPOSALS IS NOT AWARDED UNTIL ANY PROTEST MADE IN CONNECTION WITH THE REQUEST FOR PROPOSALS HAS BEEN RESOLVED PURSUANT TO SECTION 24-109-102 (2).

SECTION 44. In Colorado Revised Statutes, 24-109-105, **amend** (1)(a) and (1)(b) as follows:

24-109-105. Debarment and suspension. (1) (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee, after consultation with the using agency and the attorney general, shall have authority to

debar a person for any of the reasons set forth in subsection (2) of this section from consideration for award of contracts. The debarment shall not be for a period of more than three years; EXCEPT THAT, IF A PERSON IS CONVICTED OF A CRIME SPECIFIED IN SUBSECTION (2) OF THIS SECTION, THE LENGTH OF THE DEBARMENT PERIOD MUST EQUAL THE LENGTH OF THE CONFINEMENT SENTENCE INCLUDING THE PERIOD OF MANDATORY PAROLE IF IMPOSED OR THE LENGTH OF THE PROBATION SENTENCE.

(b) ~~The head of a purchasing agency~~ PROCUREMENT OFFICIAL OR ~~a~~ HIS OR HER designee, after consultation with the using agency and the attorney general, shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that such person has engaged in activities that may lead to debarment. The suspension shall not be for a period exceeding three months. However, if a criminal charge has been issued for an offense that would be a cause for debarment under subsection (2) of this section, the suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person. If a person is suspended because a criminal charge has been issued against an officer, director, partner, manager, key employee, or other principal of the suspended person, the suspension may remain in effect until after the trial of the officer, director, partner, manager, key employee, or other principal or until after the charges against such officer, director, partner, manager, key employee, or other principal have been dismissed.

SECTION 45. In Colorado Revised Statutes, **amend** 24-109-106 as follows:

24-109-106. Resolution of contract and breach of contract controversies - applicability - authority. (1) This section applies to controversies between the state and a contractor which arise under, or by virtue of, a contract between them, including, without limitation, controversies which are based upon breach of contract, mistake, misrepresentation, or any other cause for contract modification or rescission.

(1.5) WHEN A CONTROVERSY CANNOT BE RESOLVED BY MUTUAL AGREEMENT, THE AGGRIEVED PARTY MAY SUBMIT THE CONTROVERSY TO THE PROCUREMENT OFFICIAL. THE PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE SHALL, WITHIN TWENTY BUSINESS DAYS AFTER RECEIVING A WRITTEN REQUEST BY THE AGGRIEVED PARTY FOR A FINAL DECISION, ISSUE A WRITTEN DECISION.

(2) ~~The head of a purchasing agency or a designee~~ PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE is authorized to settle and resolve any controversy described in subsection (1) of this section. This authority shall be exercised pursuant to rules PROMULGATED BY THE EXECUTIVE DIRECTOR which shall provide for an expeditious resolution of the controversy.

SECTION 46. In Colorado Revised Statutes, **amend** 24-109-107 as follows:

24-109-107. Issuance and appeal of decision. (1) ~~The head of a purchasing agency~~ PROCUREMENT OFFICIAL OR ~~a~~ HIS OR HER designee shall promptly issue a written decision WITHIN THE PERIODS SPECIFIED IN THIS ARTICLE 109 regarding any protest, debarment or suspension, or contract controversy if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and give

notice to the ~~protestor, prospective contractor, or contractor~~ AGGRIEVED PARTY of his or her right to administrative REVIEW OF ANY MATERIAL ISSUE and judicial ~~reviews~~ REVIEW as provided for in this ~~article~~ ARTICLE 109.

(2) A decision shall be effective unless ~~stayed or until~~ reversed on appeal. A copy of the decision rendered under subsection (1) of this section shall be mailed or otherwise furnished immediately to the ~~protestor, prospective contractor, or contractor~~ AGGRIEVED PARTY. The decision shall be final and conclusive unless the ~~protestor, prospective contractor, or contractor~~ AGGRIEVED PARTY appeals the decision to the executive director or commences an action in court pursuant to this ~~article.~~ Any ARTICLE 109. EXCEPT FOR APPEALS REFERRED TO THE OFFICE OF ADMINISTRATIVE COURTS PURSUANT TO SECTION 24-109-201, AN appeal from a decision under this section shall not be subject to the provisions of section 24-4-105.

(3) If the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee does not issue a written decision regarding a contract controversy within twenty ~~working~~ BUSINESS days after written request for a final decision, or within such longer period as may be agreed upon by the ~~parties~~ PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE AND THE CONTRACTOR, then the contractor may proceed as if a decision against him or her had been rendered.

SECTION 47. In Colorado Revised Statutes, **add** 24-109-108 as follows:

24-109-108. Computation of time. FOR THE PURPOSES OF THIS ARTICLE 109, IN COMPUTING TIME FOR A PERIOD OF DAYS, THE FIRST BUSINESS DAY IS EXCLUDED AND THE LAST BUSINESS DAY IS INCLUDED.

SECTION 48. In Colorado Revised Statutes, **amend** part 2 of article 109 of title 24 as follows:

PART 2 APPEALS

24-109-201. Appeal to the executive director - stay of procurements.
(1) Unless an action has been initiated previously in the district court of the city and county of Denver pursuant to this ~~article~~ ARTICLE 109, the executive director shall have the authority to review and determine ~~de novo~~ any appeal by an aggrieved ~~person~~ PARTY from a decision of the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee rendered pursuant to section 24-109-107. The executive director is authorized to designate another person to exercise his or her powers pursuant to this part 2. THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE MAY REFER AN APPEAL TO THE OFFICE OF ADMINISTRATIVE COURTS TO REVIEW AND DETERMINE ANY APPEAL PURSUANT TO SECTION 24-30-1001. IF THE AGGRIEVED PARTY FILES AN ACTION WITH THE DISTRICT COURT OF THE CITY AND COUNTY OF DENVER PURSUANT TO SECTION 24-109-205 AT ANY TIME DURING THE REVIEW BY THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE, THE AUTHORITY OF THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE IS TERMINATED.

(2) A CONTRACT FOR A TOTAL VALUE OF ONE MILLION FIVE HUNDRED THOUSAND DOLLARS OR MORE RESULTING FROM A REQUEST FOR PROPOSALS IS NOT AWARDED UNTIL ANY APPEAL MADE IN CONNECTION WITH THE REQUEST FOR PROPOSALS HAS

BEEN RESOLVED PURSUANT TO THIS PART 2; EXCEPT THAT THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE MAY OVERRIDE THE STAY IF HE OR SHE DETERMINES THAT SUCH OVERRIDE IS IN THE BEST INTEREST OF THE STATE.

24-109-202. Rules of procedure. (1) The executive director shall adopt rules of procedure which, to the fullest extent possible, provide for the expeditious resolution of appeals of controversies. The only parties to the appeals shall be the ~~persons aggrieved by decisions of the head of a purchasing agency or a designee~~ AGGRIEVED PARTIES and the appropriate ~~state agency~~ GOVERNMENTAL BODY. Section 24-4-105 shall not apply to reviews and determinations made by the executive director or his or her designee pursuant to this ~~article~~ ARTICLE 109.

(2) AN APPEAL IS LIMITED TO ONLY THE MATERIAL ISSUES RAISED IN THE ORIGINAL PROTEST; EXCEPT THAT THE APPEAL MAY INCLUDE NEW EVIDENCE OR ADDITIONAL INFORMATION RELATED TO THOSE MATERIAL ISSUES OR MATERIAL ISSUES RELATED TO THE CONDUCT OF THE PROTEST.

24-109-203. Time limitation for appeals. (1) In the case of an appeal to the executive director from a decision regarding a protested solicitation or award, the aggrieved ~~person~~ PARTY shall file an appeal within ten ~~working~~ BUSINESS days of the date that a decision is mailed OR OTHERWISE FURNISHED TO THE AGGRIEVED PARTY pursuant to section 24-109-107 (2).

(2) In the case of an appeal to the executive director from a decision regarding a debarment, suspension, or contract controversy, the aggrieved ~~person~~ PARTY shall file an appeal within twenty ~~working~~ BUSINESS days of ~~receipt of~~ a decision rendered or deemed to be rendered pursuant to section 24-109-107.

24-109-204. Decisions of the executive director. (1) On each appeal submitted, the executive director or ~~the executive director's~~ HIS OR HER 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~~ THE AGGRIEVED PARTY AND THE PROCUREMENT OFFICIAL OF THE USING AGENCY.

(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 OR CONTRACT CONTROVERSY, A WRITTEN DECISION SHALL BE ISSUED within thirty ~~working~~ BUSINESS 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.~~

(3) IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE DETERMINES THAT THE SOLICITATION OR AWARD WAS NOT IN ACCORDANCE WITH THIS CODE, REMEDIES AWARDED IN THE DECISION, IF ANY, SHALL BE LIMITED TO THOSE SET FORTH IN PART

5 OF THIS ARTICLE 109.

24-109-205. Appeals to district court. An appeal of a decision by OF the executive director or a HIS OR HER designee rendered pursuant to section 24-109-201 or by the head of a purchasing agency PROCUREMENT OFFICIAL or a HIS OR HER designee rendered pursuant to section 24-109-107 shall be filed with the district court for the city and county of Denver, which shall have exclusive jurisdiction to hear such appeals. ~~Any judicial action under this part 2 shall be de novo, and~~ The provisions of section 24-4-106 shall not apply TO ANY APPEAL TO THE DISTRICT COURT UNDER THIS PART 2.

24-109-206. Time limitations on appeals to the district court. (1) A judicial review of a decision of the executive director or a HIS OR HER designee or of the head of a purchasing agency PROCUREMENT OFFICIAL or a HIS OR HER designee shall be initiated within the following time periods:

(a) In the case of an action between the state and a bidder, offeror, or contractor, ~~prospective or actual, who is~~ AN aggrieved PARTY AGGRIEVED in connection with the solicitation or award of a contract, within ten ~~working~~ BUSINESS days after receipt of the decision IS RENDERED;

(b) In the case of a suspension or debarment, within six months after receipt of the decision IS RENDERED; or

(c) In the case of an action on a contract or for breach of a contract, within twenty ~~working~~ BUSINESS days after the date of the decision IS RENDERED.

SECTION 49. In Colorado Revised Statutes, **amend** 24-109-301 as follows:

24-109-301. Interest. EXCEPT FOR INTEREST PAYABLE ON LIABILITY INCURRED BY THE STATE UNDER SECTION 24-30-202 (24), interest on amounts determined to be due to a contractor or to the state UNDER THIS CODE shall be payable ACCRUE from the date the payment was due in accordance with the terms of the contract or the claim was filed, whichever is earlier, through the date of decision or judgment, ~~whichever is later~~ CONTROVERSY WAS SUBMITTED PURSUANT TO SECTION 24-109-106 THROUGH THE FINAL RESOLUTION OF THE CONTROVERSY BY THE PROCUREMENT OFFICIAL OR UPON FINAL DETERMINATION OF THE EXECUTIVE DIRECTOR OR ADJUDICATION OF THE DENVER DISTRICT COURT, WHICHEVER OCCURS LAST. Interest shall be calculated at eleven percent per annum AT THE AMOUNT DUE AT THE RATE SET FORTH IN THE CONTRACT OR AT THE RATE OF ONE PERCENT PER MONTH, WHICHEVER IS GREATER, UNTIL THE AMOUNT IS PAID IN FULL.

SECTION 50. In Colorado Revised Statutes, **amend** 24-109-404 as follows:

24-109-404. Liability of public employees. If any governmental body purchases any supplies, services, or construction contrary to the provisions of this code or the rules promulgated pursuant thereto, the head of such governmental body and the public employee, which for the purposes of this section includes elected officials, actually making such purchase shall be personally liable for the costs thereof OF SUCH SUPPLIES, SERVICES, OR CONSTRUCTION. If such supplies, services, or construction are unlawfully purchased and paid for with state moneys, the amount

thereof may be recovered in the name of the state in an appropriate civil action.

SECTION 51. In Colorado Revised Statutes, **add** part 5 to article 109 of title 24 as follows:

**PART 5
REMEDIES**

24-109-501. Applicability. THE REMEDIES SET FORTH IN THIS PART 5 SHALL BE THE EXCLUSIVE REMEDIES AVAILABLE TO AN AGGRIEVED PARTY UPON A JUDICIAL OR ADMINISTRATIVE DETERMINATION THAT A SOLICITATION OR AWARD OF A CONTRACT WAS IN VIOLATION OF THIS CODE. FOR THE PURPOSES OF THIS PART 5, A VIOLATION OF THE CODE SHALL NOT INCLUDE ADMINISTRATIVE OR CLERICAL DEFECTS THAT ARE NOT MATERIAL TO THE SOLICITATION OR AWARD OF A CONTRACT OR THAT CAN BE CORRECTED BY THE GOVERNMENTAL BODY. ANY RELIEF NOT EXPRESSLY PROVIDED FOR IN THIS PART 5 IS PROHIBITED.

24-109-502. Protests - remedies prior to an award. IF, PRIOR TO THE AWARDING OF A CONTRACT, THE PROCUREMENT OFFICIAL DETERMINES THAT A SOLICITATION OR THE PROPOSED AWARD IS IN VIOLATION OF THIS CODE, THE SOLICITATION OR PROPOSED AWARD SHALL BE CANCELED OR REVISED TO COMPLY WITH THIS CODE, AT THE DIRECTION OF THE PROCUREMENT OFFICIAL. THE DETERMINATION OF THE PROCUREMENT OFFICIAL UNDER THIS SECTION SHALL NOT BE SUBJECT TO FURTHER ADMINISTRATIVE OR JUDICIAL REVIEW.

24-109-503. Protest - remedies following an award - ratification by chief procurement officer. IF THE PROCUREMENT OFFICIAL DETERMINES THAT THE SOLICITATION OR AWARD IS IN VIOLATION OF THIS CODE, THE PROCUREMENT OFFICIAL MAY CANCEL OR TERMINATE SUCH SOLICITATION OR AWARD, DIRECT THE GOVERNMENTAL BODY TO MODIFY SUCH SOLICITATION OR AWARD TO ELIMINATE THE VIOLATIONS, OR IF THE PROCUREMENT OFFICIAL DETERMINES THAT THE SOLICITATION OR AWARD IS IN THE BEST INTERESTS OF THE STATE, THE PROCUREMENT OFFICIAL MAY SUBMIT THE RECOMMENDATION TO RATIFY THE SOLICITATION OR AWARD TO THE EXECUTIVE DIRECTOR OR THE CHIEF PROCUREMENT OFFICER OR A DESIGNEE OF EITHER OFFICER. IF THE EXECUTIVE DIRECTOR OR CHIEF PROCUREMENT OFFICER OR A DESIGNEE OF EITHER OFFICER ELECTS TO RATIFY THE SOLICITATION OR AWARD, THE AGGRIEVED PARTY WHO SHOULD HAVE BEEN AWARDED THE CONTRACT UNDER THE SOLICITATION, BUT WAS NOT, SHALL BE ENTITLED TO COSTS AS SET FORTH IN SECTION 24-109-505. THE ACCEPTANCE OF COSTS BY THE AGGRIEVED PARTY CONSTITUTES A WAIVER OF THE RIGHT TO APPEAL THE DETERMINATION OF THE EXECUTIVE DIRECTOR OR THE CHIEF PROCUREMENT OFFICER OR A DESIGNEE OF EITHER OFFICER.

24-109-504. Appeals - remedies following an award. (1) IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE DETERMINES THAT THE SOLICITATION OR AWARD IS IN VIOLATION OF THIS CODE IN ANY MATERIAL RESPECT, THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE MAY CANCEL OR TERMINATE SUCH SOLICITATION OR AWARD, DIRECT THE PURCHASING AGENCY TO MODIFY SUCH SOLICITATION OR AWARD TO ELIMINATE ANY VIOLATIONS, OR IF THE PROCUREMENT OFFICIAL DETERMINES THAT THE SOLICITATION OR AWARD IS IN THE BEST INTERESTS OF THE STATE, THE PROCUREMENT OFFICIAL MAY SUBMIT THE RECOMMENDATION TO RATIFY

THE SOLICITATION OR AWARD TO THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE. IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE ELECTS TO RATIFY THE SOLICITATION OR AWARD, THE AGGRIEVED PARTY WHO SHOULD HAVE BEEN AWARDED THE CONTRACT UNDER THE SOLICITATION, BUT WAS NOT, SHALL BE ENTITLED TO COSTS AS SET FORTH IN SECTION 24-109-505.

(2) IF, UPON JUDICIAL REVIEW UNDER SECTION 24-109-205, IT IS DETERMINED THAT A SOLICITATION OR PROPOSED AWARD IS IN VIOLATION OF THIS CODE, THE COURT SHALL DIRECT THE EXECUTIVE DIRECTOR TO DETERMINE WHETHER THE BEST INTERESTS OF THE STATE REQUIRE RATIFICATION, TERMINATION, OR CANCELLATION OF THE SOLICITATION, AWARD, OR CONTRACT. THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE SHALL ISSUE A DETERMINATION IN WRITING, WITHIN TEN BUSINESS DAYS OF THE COURT'S DIRECTION, AND DIRECT THE PURCHASING AGENCY TO COMPLY WITH THE DETERMINATION. THE DETERMINATION OF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE UNDER THE DIRECTION OF THE DISTRICT COURT SHALL NOT BE SUBJECT TO FURTHER ADMINISTRATIVE OR JUDICIAL APPEAL OR REVIEW.

(3) IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE RATIFIES A SOLICITATION OR AWARD IN VIOLATION OF THIS CODE, THE AGGRIEVED PARTY WHO SHOULD HAVE BEEN, BUT WAS NOT, AWARDED THE CONTRACT UNDER THE SOLICITATION SHALL BE ENTITLED TO COSTS AS SET FORTH IN SECTION 24-109-505.

24-109-505. Costs. WHEN A PROTEST IS SUSTAINED BY THE PROCUREMENT OFFICIAL OR UPON ADMINISTRATIVE OR JUDICIAL REVIEW AND THE AGGRIEVED PARTY SHOULD HAVE BEEN, BUT WAS NOT, AWARDED THE CONTRACT UNDER THE SOLICITATION, THE AGGRIEVED PARTY SHALL BE ENTITLED TO ONLY THE REASONABLE COSTS INCURRED IN CONNECTION WITH THE SOLICITATION, INCLUDING BID PREPARATION COSTS. REASONABLE COSTS SHALL NOT INCLUDE ATTORNEY FEES. NO OTHER COSTS SHALL BE PERMITTED. THESE COSTS SHALL BE PAID FROM FUNDS APPROPRIATED OR OTHERWISE MADE AVAILABLE TO THE USING AGENCY THAT IS DETERMINED TO BE RESPONSIBLE FOR THE VIOLATION OF THE CODE. SUCH DETERMINATION SHALL BE MADE BY THE PROCUREMENT OFFICIAL IN CONNECTION WITH A PROTEST AND BY THE EXECUTIVE DIRECTOR IN CONNECTION WITH AN APPEAL.

SECTION 52. In Colorado Revised Statutes, **amend** 24-110-201 as follows:

24-110-201. Cooperative purchasing authorized. (1) IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE 110 AND RULES PROMULGATED BY THE EXECUTIVE DIRECTOR, any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public procurement units, external procurement activities UNITS, or procurement consortiums that include as members tax-exempt organizations as defined by section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

(1.5) WITH PRIOR WRITTEN APPROVAL OF THE CHIEF PROCUREMENT OFFICER AND

UNDER PROCEDURES ESTABLISHED BY RULE, A STATE PUBLIC PROCUREMENT UNIT MAY SPONSOR, CONDUCT, OR ADMINISTER A COOPERATIVE PURCHASING AGREEMENT WITH ONE OR MORE PUBLIC PROCUREMENT UNITS, EXTERNAL PROCUREMENT UNITS, OR PROCUREMENT CONSORTIUMS.

(2) With prior written approval of the ~~executive director~~ CHIEF PROCUREMENT OFFICER and under procedures established by rule, a state public procurement unit may purchase goods or services under the terms of a contract between a vendor and an external procurement ~~activity~~ UNIT or a local public procurement unit without complying with the requirements of section 24-102-202.5 and article 103 of this ~~title~~ TITLE 24.

(3) WITH WRITTEN APPROVAL FROM THE PROCUREMENT OFFICIAL AND UNDER PROCEDURES ESTABLISHED BY RULE, A STATE PUBLIC PROCUREMENT UNIT MAY PURCHASE GOODS OR SERVICES UNDER THE TERMS OF ANOTHER STATE PUBLIC PROCUREMENT UNIT WITHOUT COMPLYING WITH THE REQUIREMENTS SPECIFIED IN SECTION 24-102-202.5 AND ARTICLE 103 OF THIS TITLE 24.

(4) UNLESS OTHERWISE APPROVED BY THE CHIEF PROCUREMENT OFFICER, THE PROCUREMENT OFFICIAL SHALL COMPLY WITH THE FOLLOWING ORDER OF PRIORITY FOR THE USE OF COOPERATIVE PURCHASING AGREEMENTS:

(a) FIRST, STATE-ISSUED COOPERATIVE PURCHASING AGREEMENTS;

(b) SECOND, STATE PUBLIC PROCUREMENT UNIT COOPERATIVE PURCHASING AGREEMENTS; AND

(c) THIRD, PUBLIC PROCUREMENT UNIT OR EXTERNAL PUBLIC PROCUREMENT UNIT COOPERATIVE PURCHASING AGREEMENTS.

(5) A LOCAL PUBLIC PROCUREMENT UNIT MAY PARTICIPATE IN, SPONSOR, CONDUCT, OR ADMINISTER A COOPERATIVE PURCHASING AGREEMENT FOR THE PROCUREMENT OF ANY SUPPLIES OR SERVICES AS PERMITTED BY THE PROCUREMENT CODE, ORDINANCES, AND RULES OF SUCH LOCAL PUBLIC PROCUREMENT UNIT.

SECTION 53. In Colorado Revised Statutes, **amend** 24-110-202 as follows:

24-110-202. Sale, acquisition, or use of supplies by a public procurement unit. Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement ~~activity~~ UNIT independent of the requirements of article 103 of this ~~title~~ TITLE 24.

SECTION 54. In Colorado Revised Statutes, **amend** 24-110-203 as follows:

24-110-203. Cooperative use of supplies or services. Any public procurement unit may enter into an agreement, independent of the requirements of article 103 of this ~~title~~ TITLE 24, with any other public procurement unit or external procurement ~~activity~~ UNIT for the cooperative use of supplies or services under the terms agreed upon between the parties.

SECTION 55. In Colorado Revised Statutes, **amend** 24-110-204 as follows:

24-110-204. Joint use of facilities. Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement ~~activity~~ UNIT under the terms agreed upon between the parties.

SECTION 56. In Colorado Revised Statutes, 24-110-205, **amend** (1), (2), (3) introductory portion, and (4) introductory portion as follows:

24-110-205. Supply of personnel, information, and technical services.
 (1) Any public procurement unit is authorized, in its discretion, upon written request from another public procurement unit or external procurement ~~activity~~ UNIT, to provide personnel to the requesting public procurement unit or external procurement ~~activity~~ UNIT.

(2) Informational, technical, and other services of any public procurement unit may be made available to any other public procurement unit or external procurement ~~activity~~ UNIT if the requirements of the public procurement unit tendering the services shall have precedence over the requesting public procurement unit or external procurement ~~activity~~ UNIT. The requesting public procurement unit or external procurement ~~activity~~ UNIT shall pay any expenses incurred in providing such services, in accordance with the agreement between the parties.

(3) Upon request, the executive director through the division of local government, within the department of local affairs, may make available to local public procurement units and external procurement ~~activities~~ UNITS the following items, including, but not limited to:

(4) The state, through the division of local government within the department of local affairs, may provide to local public procurement units and external procurement ~~activities~~ UNITS technical services, including, but not limited to, the following:

SECTION 57. In Colorado Revised Statutes, **amend** 24-110-206 as follows:

24-110-206. Use of payments received by a supplying public procurement unit. All payments from any public procurement unit or external procurement ~~activity which~~ UNIT THAT are received by a public procurement unit for supplying personnel or services shall be available for use as authorized by law or pursuant to fiscal rules.

SECTION 58. In Colorado Revised Statutes, **amend** 24-110-207 as follows:

24-110-207. Public procurement units - compliance with code. Whenever the public procurement unit or external procurement ~~activity which~~ UNIT THAT is administering a cooperative ~~purchase~~ PURCHASING agreement complies with the requirements of this code, the public procurement unit ~~which~~ THAT is participating in such agreement shall also be deemed to have complied with this code. No public procurement unit may enter into a cooperative purchasing agreement for the purpose of circumventing this code.

SECTION 59. In Colorado Revised Statutes, 24-110-207.5, **amend** (2) as

follows:

24-110-207.5. Certification of certain entities as local public procurement units - rules - report. (2) The executive director ~~shall~~ ^{MAY} adopt such rules as are necessary to implement the certification process required by this section.

SECTION 60. In Colorado Revised Statutes, 8-17-101, **amend** (2) introductory portion and (2)(b) as follows:

8-17-101. Colorado labor employed on public works. (2) As used in this ~~article~~ ^{ARTICLE 17:}

(b) "Public works project" ~~shall have~~ ^{HAS} the same meaning as "public project" as defined in ~~section 8-19-102 (2)~~ ^{SECTION 24-103-908 (1).}

SECTION 61. In Colorado Revised Statutes, 17-24-106.6, **amend** (2)(a) as follows:

17-24-106.6. Surplus state property. (2) The director shall promulgate rules to be utilized by the division in governing:

(a) The sale or disposal of surplus state property by public auction, ~~competitive sealed bidding~~ ^{INVITATION FOR BIDS}, or daily warehouse sales; and

SECTION 62. In Colorado Revised Statutes, 17-24-111, **amend** (1)(a) and (6)(a) as follows:

17-24-111. Purchasing requirement. (1) (a) The director is hereby authorized to develop programs that produce goods and services, including capital construction items, which are used by agencies financed in whole or in part by the state, any political subdivision thereof, or the federal government and to develop programs that produce goods, including capital construction items, which are used by public entities involved in lease-purchase agreements as provided in section 17-24-106 (1)(f)(II). The director shall also develop programs to market goods and services to distributor networks, nonprofit organizations, private sector retailers, and the general public. The state and its institutions, agencies, and departments may purchase through the department of personnel or purchasing agency authorized by section 24-102-302 (2), ~~C.R.S.~~, such goods and services as are produced by the division, unless similar goods and services can be obtained at or below the amount established for small purchases which are exempt from the ~~competitive sealed bidding~~ ^{INVITATION FOR BIDS} requirements of the "Procurement Code" contained in part 2 of article 103 of title 24. ~~C.R.S.~~ Goods and services produced by the division shall be provided at a price comparable to the current market price for similar goods and services. State agencies may purchase goods and services from sources other than the division; except that office furniture and office systems shall be purchased from the division. Printing services shall be purchased from the division unless a state agency operates its own printing operation. If the division is not able to provide its goods or services at a price or level of quality which is comparable to that provided by the private sector or provide them in a timely manner, which price, level of quality, or timeliness is determined by the department of personnel, the department of personnel shall make a certification to that effect,

and the state agency purchasing such goods or services shall not be required to purchase them from the division.

(6) (a) Notwithstanding any provision of this section to the contrary, on and after July 1, 2012, a state institution of higher education or the Auraria higher education center created in article 70 of title 23, ~~C.R.S.~~, may, but is not required to, purchase goods and services from the division pursuant to this section. In purchasing furniture and office systems that exceed the amount established for small purchases that are exempt from the ~~competitive sealed bidding~~ INVITATION FOR BIDS requirements of the "Procurement Code" contained in part 2 of article 103 of title 24, ~~C.R.S.~~, a state institution of higher education or the Auraria higher education center shall request a bid from the division for the purchase, and the institution or the center shall consider the bid on a competitive basis.

SECTION 63. In Colorado Revised Statutes, **amend** 23-5-132 as follows:

23-5-132. Governing boards - travel policies - exemption from state travel rules. Each governing board shall adopt travel policies for the institutions of higher education under its control, including but not limited to the use of travel services or travel agencies by the employees of the governing board or said institutions. Any rules adopted by the state controller pursuant to section 24-30-202 (26), ~~C.R.S.~~, or by the executive director of the department of personnel pursuant to ~~section 24-102-401, C.R.S.~~ SECTION 24-102-202, that impose restrictions or requirements pertaining to the use of travel services or travel agencies shall not apply to a governing board or state institution of higher education.

SECTION 64. In Colorado Revised Statutes, 24-30-202, **amend** (24)(b) as follows:

24-30-202. Procedures - vouchers, warrants, and checks - rules - penalties - definitions. (24) (b) As used in ~~paragraph (a) of this subsection (24)~~ SUBSECTION (24)(a) OF THIS SECTION, "liability incurred on behalf of the state" means the receipt of supplies, as defined in ~~section 24-101-301 (22)~~ SECTION 24-101-301 (47), or services, as defined in ~~section 24-101-301 (20)~~ SECTION 24-101-301 (42), and receipt of a correct notice of the amount due, by the state agency procuring such supplies or services from a nongovernmental entity. No liability is incurred on behalf of the state if a good faith dispute exists as to the state's obligation to pay all or a portion of the account. Nothing in this subsection (24) shall be construed to affect any provision for the time of payment in a written contract between a state agency procuring services or supplies and a nongovernmental entity.

SECTION 65. In Colorado Revised Statutes, 24-30-1505, **amend** (2) as follows:

24-30-1505. Powers of the executive director. (2) The executive director shall determine the need, if any, for procuring commercial insurance to protect the state against liability and the specifications for such insurance. The acquisition of any insurance shall be pursuant to the state "Procurement Code", articles 101 to 112 of this ~~title~~ TITLE 24. In the event that no responsible ~~competitive sealed bids~~ RESPONSES TO AN INVITATION FOR BIDS are received, the executive director may negotiate with any agent, broker, or insurance company to secure the required coverage or necessary coverage. Such negotiated policy or policies shall be subject

to the approval of the board.

SECTION 66. In Colorado Revised Statutes, 24-37-403, **amend** (3) introductory portion as follows:

24-37-403. Establishment of state pay for success contracts program - pay for success contracts fund - creation. (3) The office, or the office and one or more local governments as authorized by subsection (4) of this section, may enter into a contract with a lead contractor for the provision of program-eligible interventions. Entry into such a contract is generally subject to the requirements of the "Procurement Code", articles 101 to 112 of this ~~title~~ TITLE 24, and the office is encouraged, but not required, to use the ~~competitive sealed~~ REQUEST FOR proposals process specified in section 24-103-203. When developing and reviewing the terms of a pay for success contract, the office may consult with the state treasurer on financial terms and with experts to provide advice regarding definition of appropriate performance targets. A contract shall not require or authorize the state to use federal moneys to make success payments unless federal law or federal regulations authorize the use of federal moneys for that purpose. Before it enters into a contract, the office shall make the contract available to the public on the office's website and provide an opportunity for public comment regarding the contract. Prior to entering into the terms of a contract, a contract must:

SECTION 67. In Colorado Revised Statutes, 24-91-103.6, **amend** (2)(b), (2)(c), and (4) as follows:

24-91-103.6. Public entity - contracts - appropriations - contract modifications - severability - definition. (2) Every public works contract, as defined in section 24-91-103.5 (1)(b), shall contain the following:

(b) A clause that prohibits the issuance of any ~~change order, as defined in section 24-101-301(2)~~ CONTRACT MODIFICATION, AS DEFINED IN SECTION 24-101-301 (10), or other form of ~~order~~ MODIFICATION or directive by the public entity requiring additional compensable work to be performed, which work causes the aggregate amount payable under the contract to exceed the amount appropriated for the original contract, unless the contractor is given written assurance by the public entity that lawful appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under a remedy-granting provision in the contract; and

(c) For any form of ~~order~~ MODIFICATION or directive by the public entity requiring additional compensable work to be performed, a clause that requires the public entity to reimburse the contractor for the contractor's costs on a periodic basis, as those terms are defined in the contract, for all additional directed work performed until a ~~change order~~ CONTRACT MODIFICATION is finalized. In no instance shall the periodic reimbursement be required before the contractor has submitted an estimate of cost to the public entity for the additional compensable work to be performed. Notwithstanding the provisions of this ~~paragraph (c)~~ SUBSECTION (2)(c), state public works contracts shall be subject to the provisions of section 24-30-202.

(4) In the event that a good faith dispute arises between a public entity and a

contractor concerning the contractor's right to receive additional compensation under a remedy-granting provision of the public works contract, it shall not be a defense to a civil action for payment for such claim that no moneys have been appropriated for such claimed amounts, so long as the contractor has complied with all provisions of the contract applicable to the dispute, including but not limited to ~~change-order~~ CONTRACT MODIFICATION and additional work clauses, and has submitted to the public entity a statement sworn to under penalty of perjury which sets forth: The amount of additional compensation to which the contractor contends that it is entitled; that claim-supporting data which is accurate and complete to the best of the contractor's knowledge and belief have been submitted; and that the amount requested accurately reflects what is owed by the public entity. As used in this subsection (4), "remedy-granting provision" means any contract clause which permits additional compensation in the event that a specific contingency or event occurs. Such term shall include, but shall not be limited to, change clauses, differing site conditions clauses, variation in quantities clauses, and termination for convenience clauses.

SECTION 68. In Colorado Revised Statutes, 24-92-103, **amend** (1) as follows:

24-92-103. Construction of public projects - invitation for bids. (1) All construction contracts for public projects that do not receive federal moneys may be awarded by ~~competitive sealed bidding~~ SOLICITED BY INVITATION FOR BIDS pursuant to this section.

SECTION 69. In Colorado Revised Statutes, 24-92-103.5, **amend** (5) as follows:

24-92-103.5. Construction of public projects - invitation for best value bids. (5) ~~A request for competitive sealed best value bids~~ AN INVITATION FOR BEST VALUE BIDS issued pursuant to this section must otherwise comply with the requirements of section 24-103-203 concerning ~~competitive sealed~~ REQUESTS FOR proposals for nonconstruction contracts to the extent that such requirements do not conflict with this section. In the case of a conflict, the provisions of this section supersede.

SECTION 70. In Colorado Revised Statutes, **amend** 24-92-103.7 as follows:

24-92-103.7. Disclosure - invitation for bids - invitation for best value bids. The executive director of an agency of government or president of an institution of higher education that enters into a construction contract for a public project pursuant to this ~~article~~ ARTICLE 92 that is not funded in any part with federal moneys shall disclose to the public the agency of government's rationale or the institution's rationale for selecting the ~~competitive sealed bidding~~ INVITATION FOR BIDS process pursuant to section 24-92-103 or the ~~competitive sealed best value bidding~~ INVITATION FOR BEST VALUE BIDS process pursuant to section 24-92-103.5 for the public project. The agency or institution shall post the disclosure on its website.

SECTION 71. In Colorado Revised Statutes, **amend** 24-92-110 as follows:

24-92-110. Rules and regulations. The executive director of the department of personnel shall promulgate rules and regulations which are designed to implement the provisions of this ~~article~~ ARTICLE 92; except that the executive director of the

department of transportation shall promulgate rules and regulations relating to bridge and highway construction bidding practices including, notwithstanding any other provisions of this ~~article~~ ARTICLE 92, rules governing debarment of contractors. The rules must include provisions requiring agencies of government to keep certain public project records, even if duplicative, in accordance with generally accepted cost accounting principles and standards. In addition, the rules must include criteria to be used by a responsible ~~officer~~ PROCUREMENT OFFICIAL in evaluating a ~~competitive sealed~~ RESPONSE TO AN INVITATION FOR best value ~~bid~~ BIDS pursuant to section 24-92-103.5 (3).

SECTION 72. In Colorado Revised Statutes, 30-20-1406, **amend** (2)(f)(III) introductory portion as follows:

30-20-1406. Waste tire market development fund - creation - incentive programs - legislative declaration - repeal. (2) The department shall use the fund:

(f) (III) For the purpose of expending tire reuse or recycling incentives under this ~~paragraph (f)~~ SUBSECTION (2)(f)(III), the ~~state purchasing director and any purchasing agent~~ PROCUREMENT OFFICIAL OR HIS OR HER DESIGNEE have the authority to purchase tire-derived products unless any of the following conditions exist:

SECTION 73. In Colorado Revised Statutes, 43-1-113, **amend** (16)(a) 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.~~ SECTION 24-101-301 (24).

SECTION 74. In Colorado Revised Statutes, 43-1-1202, **amend** (1)(b) as follows:

43-1-1202. Department powers. (1) Notwithstanding any other law, the department may:

(b) Solicit proposals for public-private initiatives as ~~competitive sealed~~ REQUESTS FOR proposals pursuant to section 24-103-203; ~~C.R.S.~~;

SECTION 75. In Colorado Revised Statutes, 43-1-1406, **amend** (2) as follows:

43-1-1406. General procedures. (2) Except as provided in this subsection (2), the department shall allow the preference to Colorado residents provided in ~~section 8-19-101, C.R.S.~~ SECTION 24-103-908 in awarding an adjusted score design-build contract pursuant to this part 14. In evaluating and selecting a proposal for a design-build contract under this part 14, the department shall assign greater value

to a proposal in proportion to the extent such proposal commits to using Colorado residents to perform work on the transportation project. If, however, the department determines that compliance with this subsection (2) may cause the denial of federal moneys that would otherwise be available for the transportation project or if such compliance would otherwise be inconsistent with the requirements of federal law, the department shall suspend the preference granted under this subsection (2) only to the extent necessary to prevent denial of federal moneys or to eliminate the inconsistency with federal law.

SECTION 76. Repeal of provisions being relocated in this act. In Colorado Revised Statutes, **repeal** 8-18-101, 8-18-103, 8-19-101, 8-19-102, 8-19-104, 8-19-105, 8-19.5-101, 24-101-103, 24-102-204, 24-102-205, 24-102-401, 24-103-101, 24-103-202.5, 24-103-207, 24-103-207.5, 24-103-209, 24-103-210, 24-103-211, 24-103-501, 24-103-503, 24-103-601, 24-103.5-101, 24-104-101, 24-107-101, 24-109-101, and 24-110-101 (1) to (5).

SECTION 77. In Colorado Revised Statutes, **repeal** 24-103-404, 24-103-502, 24-103-807, 24-105-102, 24-109-104, 24-109-401, 24-109-402, 24-109-403, and 24-111-103.

SECTION 78. Act subject to petition - effective date. This act takes 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 9, 2017, if adjournment sine die is on May 10, 2017); 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 will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 4, 2017