

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0673.01 Nicole Myers x4326

HOUSE BILL 17-1051

HOUSE SPONSORSHIP

Rankin and Garnett,

SENATE SPONSORSHIP

Coram and Kerr,

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODERNIZATION OF THE COLORADO "PROCUREMENT**
102 **CODE".**

Bill Summary

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

The Colorado "Procurement Code" (code) governs how executive branch agencies, other than institutions of higher education that have opted out of the code, buy goods and services. The code is administered by the department of personnel (department) and exists to help keep the public trust, promote fair competition, make efficient use of taxpayer dollars, and allow the state to effectively do the people's business. The

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

code has been amended many times over the years, but it has not been reviewed in total since the general assembly enacted it in 1982.

General updates (Sections 5, 6, 9, 11, 13, 15 through 18, 21 through 23, 31, and 36). The code is based on the 1979 American bar association model procurement code. When the state adopted the model code, much of the structure and terminology was adopted as drafted by the American bar association rather than conforming the structure and language to the Colorado Revised Statutes. The bill updates the terminology used in the code to make it consistent with common use, simplifies reporting requirements, and reorganizes provisions of the code for ease of use. In addition, the bill clarifies the authority of the executive director of the department to promulgate rules for the administration of the code.

Promulgation of rules (Sections 8, 28, 32, 34, and 58). The executive director of the department is currently required to promulgate rules in furtherance of the code. The bill makes promulgation of rules by the executive director of the department (executive director) permissive throughout the code and authorizes the director to delegate his or her authority to promulgate rules.

Ethics (Sections 2 and 4). State procurement professionals follow the "Procurement Code of Ethics and Guidelines" (guidelines), which were established by the Colorado procurement advisory council. The guidelines are often interpreted to apply only to procurement staff and not to other people involved in the procurement process. The bill clarifies that state procurement officials, end users, vendors and contractors, and interested third parties are required to adhere to ethical standards during all phases of the procurement process.

Procurement training (Section 4). The bill authorizes the chief procurement officer to develop and conduct a procurement education and training program for state employees and for vendors.

Application of the code (Section 3). Certain purchasing activities are currently exempt from the code, such as bridge and highway construction, the awarding of grants to political subdivisions, and procurement by institutions of higher education that have formally opted out of the code. The bill exempts the procurement of specified additional goods and services from the code.

Grants (Sections 3 and 6). Currently, the application, processing, and management of grants is inconsistent across state agencies. The bill amends the definition of "grant" to provide consistency and to comply with federal requirements including the office of management and budget uniform guidance.

Multiyear contracts (Section 37). Currently, the state may enter into a contract for any period as long as the contract term is included in the solicitation. If a contract term ultimately needs to exceed the period specified in the solicitation, the contract cannot be extended and a new

contract is required. The bill authorizes the state to extend an existing contract, with approval of the chief procurement officer, for a reasonable period if extenuating circumstances exist.

Contract management system (Section 37). The centralized contract management system and related requirements for contract provisions, monitoring, and reporting were established for the purpose of improving the state's contracting process. The bill repeals provisions related to contract monitoring and reporting and allows for remedies, including suspension or debarment, for contractors who do not perform.

Contract terms and conditions (Section 38). The process to negotiate vendor terms and conditions sometimes requires the state to agree to a requirement that the state indemnify the vendor and that the contract be governed by the vendor's choice of law rather than Colorado law. However, indemnification is in violation of the state constitution. The bill prohibits indemnification of vendors by the state and requires that state contracts be governed by Colorado law.

Market research (Section 14). A request for information (RFI) is a commonly used method for obtaining information about pending procurements and doing market research. Currently, RFIs are referenced in the procurement rules but not in the code. The bill establishes an RFI process in the code as a market assessment and information gathering tool and clarifies the appropriate methods to conduct market research.

Administrative remedies (Sections 39 through 50). The bill clarifies the administrative remedies provisions in the code and provides guidance regarding the remedies process. Specifically, the bill clarifies who may ratify a violation of the code, specifies when a stay will apply, authorizes the executive director to refer an appeal to the office of administrative courts, and states that only material issues may be appealed.

Confidentiality and CORA (Sections 7 and 20). Pursuant to current law, procurement records are public records, with some exceptions under the "Colorado Open Records Act". Procurement records, including bids and responses to RFIs, often contain information that is proprietary or confidential by the submitting entity. The bill clarifies that all responses to RFIs are confidential until after an award based on the RFI has been made or until the procurement official determines that the state will not pursue a solicitation based on the RFI. The bill also authorizes the executive director of the department to promulgate rules to clarify the process for classifying confidential or proprietary information.

Procurement set asides, preferences, and goals (Sections 24 through 27). Current law allows a set aside in state procurement for persons with severe disabilities. The bill streamlines the process by which state agencies and nonprofit agencies that employ people with severe disabilities may use the set aside program and authorizes the executive

director to promulgate rules for the administration of the program.

In addition, current law contains many procurement preferences and goals; however, these preferences and goals are located in various provisions of the code and in other provisions of the Colorado Revised Statutes. The various locations of these provisions, as well as inconsistent terminology in the preference and goal provisions, make it difficult for vendors and procurement officials to know how each preference and goal should be applied. The bill relocates currently existing procurement preferences and goals into a new part and makes the language of those provisions consistent where possible.

Cooperative purchasing (Section 51). Cooperative purchasing is procurement conducted by, with, or on behalf of more than one public procurement entity. It increases the opportunity for the state and local governments to obtain volume discounts through joint purchasing and it lowers the transaction costs of both purchasing agencies and vendors. The bill provides state agencies with more flexibility to use cooperative purchasing to increase efficiencies and maximize state resources.

Conforming amendments (Sections 1, 10, 12, 19, 29, 30, 33, 35, 52 through 57, and 59 through 74). The bill makes necessary conforming amendments.

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:

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

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

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

11 (II.5) GRANTS;

12 (III) ~~The procurement of~~ Public printing, as defined in section
13 24-70-201, except for the provisions of article 109 of this ~~title~~ TITLE 24;

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

16 (V) The Colorado state fair authority created pursuant to section
17 35-65-401 (1); ~~C.R.S.~~;

18 (VI) The state board of land commissioners in connection with
19 contract expenditures from the state board of land commissioners
20 investment and development fund created in section 36-1-153 (1), ~~C.R.S.~~;
21 or the commercial real property operating fund created in section
22 36-1-153.7; ~~C.R.S.~~

23 (VII) Repealed.

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

26 (IX) FUEL;

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

1 (XI) COPYRIGHTED MATERIALS SUCH AS BOOKS, PERIODICALS,
2 COLLECTIONS, AND SUBSCRIPTIONS;

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

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

8 (XIV) DUES AND MEMBERSHIPS;

9 (XV) ANNUITIES;

10 (XVI) REAL PROPERTY OR INTEREST IN REAL PROPERTY; AND

11 (XVII) SERVICES APPROVED BY THE ATTORNEY GENERAL THAT
12 ARE OF A SPECIALIZED NATURE NEEDED TO SUPPORT CRIMINAL
13 PROCEEDINGS, CIVIL ENFORCEMENT, OR LEGAL SERVICES.

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

19 (b) The governing board of each institution of higher education,
20 including the Auraria higher education center established in article 70 of
21 title 23, ~~C.R.S.~~, by formal action of the board, and the Colorado
22 commission on higher education, by formal action of the commission,
23 may elect to be exempt from the provisions of this code and may enter
24 into contracts independent of the terms specified in this code.

25 (c) Repealed.

26 (d) ~~Except as provided in section 24-111-103, this code shall also~~
27 ~~apply to contracts funded in whole or in part with federal assistance~~

1 ~~moneys. This code shall apply to the transfer or disposal of state supplies.~~

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

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

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

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

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

23 ~~(4) The executive director of the department of human services~~
24 ~~may procure the necessary services and support required to develop,~~
25 ~~implement, and operate state and federal child support enforcement~~
26 ~~welfare reform mandates which shall not be subject to this code. This~~
27 ~~procurement shall be limited to funds specifically appropriated for child~~

1 ~~support enforcement in fiscal year 1997-98 subject to available~~
2 ~~appropriations for information technology hardware, software, and related~~
3 ~~services.~~

4 **SECTION 4.** In Colorado Revised Statutes, **add** 24-101-106 and
5 24-101-107 as follows:

6 **24-101-106. Procurement training.** THE CHIEF PROCUREMENT
7 OFFICER, OR HIS OR HER DESIGNEE, MAY DEVELOP AND CONDUCT A
8 PROCUREMENT EDUCATION AND TRAINING PROGRAM FOR EMPLOYEES OF
9 GOVERNMENTAL BODIES AND FOR VENDORS.

10 **24-101-107. Procurement ethics.** ANY PERSON WHO IS EMPLOYED
11 BY A GOVERNMENTAL BODY WHO PURCHASES GOODS OR SERVICES OR IS
12 INVOLVED IN THE PURCHASING PROCESS FOR THE STATE, ANY END USERS
13 OF SUCH GOODS AND SERVICES, ANY VENDOR OR CONTRACTOR THAT DOES
14 BUSINESS WITH THE STATE, AND ANY OTHER INTERESTED THIRD PARTIES
15 TO THE PROCUREMENT PROCESS SHALL ENHANCE THE PROFICIENCY AND
16 STATURE OF THE PURCHASING PROCESS BY ADHERING TO THE HIGHEST
17 STANDARDS OF ETHICAL BEHAVIOR.

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

20 **24-101-201. Determinations.** Written determinations required by
21 this code shall be retained in the appropriate official ~~contract~~
22 PROCUREMENT file of the department of personnel or the purchasing
23 agency administering the procurement.

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

26 **24-101-301. Definitions.** The terms defined in this section shall
27 have the following meanings whenever they appear in this code, unless

1 the context in which they are used clearly requires a different meaning or
2 a different definition is prescribed for a particular article or portion
3 thereof:

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

6

7 ~~(1) (2) "Award" means the acceptance of a bid or proposal and~~
8 ~~may include the presentation of a proposed written agreement for~~
9 ~~performance of the contract~~ SELECTION OF A BID OR PROPOSAL BY A
10 GOVERNMENTAL BODY. AN AWARD DOES NOT MEAN THAT A CONTRACT
11 HAS BEEN EXECUTED OR THAT A COMMITMENT VOUCHER HAS BEEN ISSUED
12 PURSUANT TO SECTION 24-30-202.

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

15 ~~(1.5) (4) "Business" means any corporation, limited liability~~
16 ~~company, partnership, individual, sole proprietorship, joint-stock~~
17 ~~company, joint venture, or other private legal entity.~~

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

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

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

1 (3) (7) "Construction" means the process of building, altering,
2 repairing, improving, or demolishing any public structure or building or
3 any other public improvements of any kind to any public real property.
4 For the purposes of this code, "construction" includes capital construction
5 and controlled maintenance, as defined in section 24-30-1301.

6 (8) "CONTINGENCY-BASED CONTRACT" SHALL HAVE THE SAME
7 MEANING AS SET FORTH IN SECTION 24-17-203 (1).

8 (4) (9) "Contract" means any type of state agreement, regardless
9 of what it may be called, ~~for the procurement or disposal of supplies,~~
10 ~~services, or construction~~ BETWEEN A GOVERNMENTAL BODY AND A
11 CONTRACTOR, WHERE THE PRINCIPAL PURPOSE IS TO ACQUIRE SUPPLIES,
12 SERVICES, OR CONSTRUCTION OR TO DISPOSE OF SUPPLIES FOR THE DIRECT
13 BENEFIT OF A GOVERNMENTAL BODY. "CONTRACT" INCLUDES
14 COMMITMENT VOUCHERS AS DESCRIBED IN SECTION 24-30-202.

15 (5) (10) "Contract modification" means any written alteration of
16 ~~specifications, delivery point, rate of delivery, period of performance,~~
17 ~~price, quantity, or other provision of a contract accomplished by mutual~~
18 ~~action of the parties to the~~ IN ACCORDANCE WITH THE TERMS OF THAT
19 contract.

20 (6) (11) "Contractor" means any person having a contract with a
21 governmental body. FOR THE PURPOSES OF THIS CODE, A VENDOR IS
22 CONSIDERED A CONTRACTOR.

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

27 (13) [Formerly 24-103-101 (1)] "Cost-reimbursement contract"

1 means a contract under which a contractor is reimbursed for costs which
2 are allowable and allocable in accordance with the contract terms and the
3 provisions of this code and a fee, if any.

4 ~~(7) Repealed.~~

5 ~~(8) (14)~~ "Department" means the department of personnel.

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

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

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

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

15 ~~(9) (16)~~ "Executive director" means the executive director of the
16 department of personnel.

17 ~~(17) [Formerly 24-110-101 (2)]~~ "External procurement ~~activity~~
18 UNIT" means any buying organization not located in this state which, if
19 located in this state, would qualify as a public procurement unit. AN
20 EXTERNAL PROCUREMENT UNIT INCLUDES ANY PURCHASING COOPERATIVE
21 THAT SATISFIES THE PURPOSES OF THIS CODE AS SET FORTH IN SECTION
22 24-101-102. An agency of the United States is an external procurement
23 ~~activity~~ UNIT.

24 ~~(10) (18)~~ "Governmental body" means any department,
25 commission, council, board, bureau, committee, institution of higher
26 education, agency, government corporation, or other establishment or
27 official, other than an elected official, of the executive branch of state

1 government in this state; except that

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

7 (b) ~~(Deleted by amendment, L. 2010, (SB 10-111), ch. 170, p.~~
8 ~~603, § 12, effective August 11, 2010.)~~

9 ~~(10.5) (a) (19) "Grant" means the furnishing of assistance,~~
10 ~~including financial or other means of assistance, by the purchasing agency~~
11 ~~to any person to support a program authorized by law~~ AN AGREEMENT IN
12 WHICH A GOVERNMENTAL BODY AS GRANTOR TRANSFERS ANYTHING OF
13 VALUE TO A GRANTEE TO CARRY OUT A PUBLIC PURPOSE OF SUPPORT OR
14 STIMULATION AUTHORIZED BY LAW INSTEAD OF ACQUIRING PROPERTY OR
15 SERVICES FOR THE DIRECT BENEFIT OR USE OF THAT GOVERNMENTAL
16 BODY. A GRANT MAY INCLUDE A DISTRIBUTION OF FUNDS.

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

18 (I) ~~A loan;~~

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

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

25 (11) ~~"Head of a purchasing agency" means the director of a~~
26 ~~purchasing agency created pursuant to section 24-102-204 or 24-102-302~~
27 ~~(2) and the principal representative authorized to enter into contracts for~~

1 ~~capital construction or controlled maintenance pursuant to part 13 of~~
2 ~~article 30 of this title.~~

3 (12) (20) "Invitation for bids" means all documents, whether
4 attached or incorporated by reference, utilized for soliciting bids.
5 INVITATION FOR BIDS IS THE COMMONLY USED TERM FOR SOLICITING
6 COMPETITIVE SEALED BIDS AND COMPETITIVE SEALED BEST VALUE BIDS.

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

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

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

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

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

27 (26) "OFFEROR" MEANS ANY PERSON THAT SUBMITS A PROPOSAL

1 IN RESPONSE TO A REQUEST FOR PROPOSALS.

2 (13) (27) "Person" means any business, individual, union,
3 committee, club, other organization, JOINT VENTURE, or group of
4 individuals.

5 (14) (28) "Procurement" means buying, purchasing, renting,
6 leasing, or otherwise acquiring any supplies, services, or construction.
7 "Procurement" includes all functions that pertain to the obtaining of any
8 supply, service, or construction, including description of requirements,
9 selection and solicitation of sources, preparation and award of contract,
10 and all phases of contract administration. "PROCUREMENT" ALSO
11 INCLUDES THE PROCUREMENT OF INFORMATION TECHNOLOGY AS DEFINED
12 IN SECTION 24-37.5-102 (2).

13 (15) (29) "Procurement officer AGENT" means any person duly
14 authorized to enter into and administer ~~contracts~~ PROCUREMENTS and
15 make written determinations with respect thereto. "Procurement officer
16 AGENT" includes an authorized representative acting within the limits of
17 his OR HER authority.

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

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

1 (16) (32) "Public employee" means an individual drawing a salary
2 from a governmental body or a noncompensated individual performing
3 personal services for a governmental body.

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

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

11 (17) (35) "Purchasing agency" means any governmental body
12 ~~other than the department of personnel~~ which is authorized to enter into
13 contracts by section 24-102-302 (1) by way of delegation from the
14 executive director pursuant to section 24-102-302 (2) or by the way of
15 delegation from the executive director. ~~pursuant to section 24-102-204.~~

16 (18) (36) "Request for proposals" means all documents, whether
17 attached or incorporated by reference, utilized for soliciting proposals.
18 REQUEST FOR PROPOSALS IS THE COMMONLY USED TERM FOR SOLICITING
19 COMPETITIVE SEALED PROPOSALS.

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

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

23 or

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

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

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

27 (III) Has ~~filed Colorado unemployment compensation reports in~~

1 ~~at least seventy-five percent of the eight quarters immediately before~~
2 ~~bidding on a contract~~ PAID COLORADO UNEMPLOYMENT COMPENSATION
3 TAXES IN AT LEAST SIX OF THE EIGHT QUARTERS IMMEDIATELY PRIOR TO
4 BIDDING ON A CONSTRUCTION CONTRACT FOR A PUBLIC PROJECT.

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

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

12 ~~(19)~~ (40) "Rules" means state procurement rules and has the same
13 meaning as provided in section 24-4-102 (15).

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

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

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

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

27 (d) RECORDS, MANUALLY OR ELECTRONICALLY, THE DATE AND

1 TIME THE BID OR PROPOSAL IS RECEIVED BY THE STATE AND THAT CANNOT
2 BE ALTERED WITHOUT LEAVING EVIDENCE OF THE ALTERATION.

3 ~~(20)~~ (42) "Services" means the furnishing of labor, time, or effort
4 by a contractor not involving the delivery of a specific end product other
5 than reports which are merely incidental to the required performance. The
6 term does not include professional services as defined in section
7 24-30-1402.

8 ~~(21) (Deleted by amendment, L. 96, p. 1533, § 98, effective June~~
9 ~~1, 1996.)~~

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

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

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

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

26 ~~(22)~~ (47) "Supplies" means all property, including but not
27 limited to equipment, materials, and insurance. The term does not include

1 land, the purchase of an interest in land, water or mineral rights, workers'
2 compensation insurance, benefit insurance for state employees, or
3 property furnished in connection with public printing, as defined in
4 section 24-70-201.

5 (23) (48) "Using agency" means any governmental body of the
6 state which utilizes any supplies, services, or construction procured under
7 this code.

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

10 **24-101-401. Public access to procurement information -**
11 **repeal.** (1) Except as provided in ~~section 24-103-203 (4), procurement~~
12 ~~information is a public record and is available to the public~~ SECTION
13 24-103-201.5, PROPOSALS AND BIDS SHALL BE OPENED SO AS TO AVOID
14 DISCLOSURE OF THE CONTENTS OF THE PROPOSAL OR BID TO COMPETING
15 OFFERORS DURING THE REVIEW PROCESS. A REGISTER OF PROPOSALS AND
16 BIDS SHALL BE PREPARED IN ACCORDANCE WITH RULES AND SUCH
17 PROCUREMENT RECORDS SHALL BE OPEN FOR PUBLIC INSPECTION AFTER
18 THE AWARD as provided in sections 24-72-203 and 24-72-204. THE
19 EXECUTIVE DIRECTOR MAY PROMULGATE RULES TO CLARIFY THE PROCESS
20 FOR CLASSIFYING CONFIDENTIAL OR PROPRIETARY INFORMATION IN
21 PROCUREMENT RECORDS.

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

24 **24-102-101. Authority and duties of the executive director.**
25 Subject to the provisions of ~~part 4~~ PART 2 of this ~~article~~ ARTICLE 102, the
26 executive director of the department of personnel has the authority and
27 responsibility to promulgate rules, consistent with this code, governing

1 the procurement and disposal of any and all supplies, services, and
2 construction to be procured by the state, except for surplus state property
3 as provided in section 17-24-106.6, C.R.S., and except as provided in part
4 4 of article 82 of this ~~title~~ TITLE 24. The executive director shall consider
5 and decide matters of policy within the provisions of this code.

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

8 **24-102-202. Authority of the executive director and chief**
9 **procurement officer - delegation of authority - rules.** (1) Consistent
10 with the provisions of this code, the executive director may adopt
11 operational procedures governing the internal functions of the
12 department.

13 (2) (a) ~~[Formerly 24-102-401 (1)] Rules shall be promulgated in~~
14 ~~accordance with the applicable provisions of section 24-4-103~~ THE
15 EXECUTIVE DIRECTOR MAY PROMULGATE RULES IN ACCORDANCE WITH
16 THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF THIS TITLE
17 24, IN FURTHERANCE OF THE ADMINISTRATION OF THIS CODE.

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

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

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

27 ~~(2)~~ (4) Except as otherwise specifically provided in this code, the

1 ~~executive director~~ CHIEF PROCUREMENT OFFICER shall, pursuant to rules:

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

4 (b) Repealed.

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

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

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

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

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

17 **24-102-202.5. Supplier database - fees - cash fund - program**
18 **account.** (1) The executive director shall develop a centralized database
19 that includes a listing of all businesses which are interested in providing
20 goods and services to the state. The businesses in the database shall be
21 identified by a registration number, and the executive director shall
22 develop a procedure for notifying the appropriate businesses whenever
23 the state issues ~~requests for proposals or invitations for bids~~
24 SOLICITATIONS for goods or services which a particular business provides.
25 The database shall be accessible through the department of personnel to
26 all purchasing agencies designated pursuant to section 24-102-302 (2).

27 (2) (a) THE EXECUTIVE DIRECTOR MAY REQUIRE each business that

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

13 (2.5) (a) The executive director shall develop and implement a
14 statewide centralized electronic procurement system to allow the
15 utilization of technology to create a more efficient delivery of state
16 procurement services. The executive director ~~shall~~ MAY set and collect
17 fees from vendors with cooperative purchasing agreements and from local
18 public procurement units ~~as defined in section 24-110-101 (3), and that~~
19 ~~are participating in the electronic procurement system, as necessary to~~
20 ~~cover the direct and indirect costs of implementing and maintaining the~~
21 ~~electronic procurement system. In addition, the executive director may~~
22 ~~collect moneys from cooperative purchasing organizations for~~
23 ~~procurement support.~~

24 (b) ~~Prior to July 1, 2013, the revenue from the fees and any~~
25 ~~moneys received from cooperative purchasing organizations pursuant to~~
26 ~~paragraph (a) of this subsection (2.5) shall be transmitted to the state~~
27 ~~treasurer, who shall credit the same to the electronic procurement~~

1 ~~program account, which is hereby created within the supplier database~~
2 ~~cash fund created in paragraph (a) of subsection (2) of this section. The~~
3 ~~moneys in the account shall be annually appropriated by the general~~
4 ~~assembly for the purposes of implementing and maintaining the electronic~~
5 ~~procurement system. All moneys not expended or encumbered and all~~
6 ~~interest earned on the investment or deposit of the moneys in the account~~
7 ~~shall remain in the account and shall not revert to the general fund or any~~
8 ~~other fund at the end of any fiscal year; except that any unexpended~~
9 ~~moneys remaining in the account on June 30, 2013, shall be transferred~~
10 ~~to the supplier database cash fund.~~

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

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

19 **24-102-207. Statewide procurement card agreement.** (1) The
20 department shall establish a statewide procurement card program. All
21 governmental bodies that utilize a procurement card shall participate in
22 the statewide program. For purposes of this section, "governmental body"
23 ~~shall have~~ HAS the same meaning as set forth in ~~section 24-101-301(10)~~
24 SECTION 24-101-301 (18); except that, for purposes of this section,
25 "governmental body" ~~shall also include~~ INCLUDES elected officials.

26 (2) Governmental bodies that are not subject to the "Procurement
27 Code", articles 101 to 112 of this ~~title~~ TITLE 24, or the fiscal rules are

1 subject to this section; except that, on and after December 1, 2010, this
2 section ~~shall~~ DOES not apply to an institution of higher education that has
3 elected to be excluded from the meaning of "governmental body"
4 pursuant to ~~section 24-101-301 (10) (a)~~ SECTION 24-101-301 (18).

5 (3) The statewide procurement card shall be considered an
6 alternate method of payment and shall not be considered a commitment
7 voucher required by section 24-30-202 (1). Any revenues resulting from
8 the procurement card program shall be deposited as cash revenue in the
9 general fund and shall be subject to annual appropriation by the general
10 assembly. Unless otherwise directed by the general assembly, the state
11 controller shall make adjustments equivalent to such revenues in the form
12 of a reduction of administrative costs allocated to governmental bodies on
13 a basis proportional to each governmental body's contribution to statewide
14 procurement card expenditures, as determined by the state controller, to
15 ensure that the federal government receives its share of procurement card
16 revenues as required by federal regulations and to ensure that the indirect
17 obligations are funded. Institutions of higher education that elect to be
18 excluded from the meaning of "governmental body" pursuant to ~~section~~
19 ~~24-101-301 (10) (a)~~ SECTION 24-101-301 (18) shall transfer money to the
20 department of higher education or the Colorado commission on higher
21 education to the extent required to pay indirect cost assessments, as
22 defined in section 24-75-112 (1)(f). For purposes of this subsection (3)
23 the term "allocated" does not mean an appropriation or cash transfer to
24 any governmental body, but refers to an internal process within the office
25 of the state controller.

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

1 **24-102-302. Purchasing agencies - establishment - authority.**

2 (1) Capital construction and controlled maintenance, as defined and
3 delegated to ~~principal representatives~~ A PROCUREMENT OFFICIAL by part
4 13 of article 30 of this ~~title~~ TITLE 24, shall be procured by such ~~principal~~
5 ~~representatives~~ PROCUREMENT OFFICIAL as the appropriate purchasing
6 agency.

7 (2) If the executive director OR HIS OR HER DESIGNEE is of the
8 opinion and so certifies in writing that the needs of any governmental
9 body are of such specialized nature and sufficient volume to warrant a
10 purchasing agency for such governmental body, he OR SHE shall authorize
11 the creation of the same. All such purchasing agencies shall operate under
12 the provisions of this code and the rules promulgated pursuant thereto and
13 shall be subject to the supervision and control of the executive director.
14 All such purchasing agencies shall operate under the provisions of section
15 17-24-111 ~~C.R.S.~~, requiring the purchase of goods and services from the
16 division of correctional industries, and failure of any such purchasing
17 agency to comply with such requirement shall be cause for the executive
18 director to suspend for a period of up to one year at the discretion of the
19 executive director the authority of a purchasing agency created pursuant
20 to this subsection (2) to purchase goods and services. The authority of a
21 purchasing agency to purchase goods and services may also be suspended
22 at the discretion of the executive director. The financial and staff
23 resources dedicated to the purchasing function in the affected agency
24 shall be under the authority of the department of personnel during the
25 period of suspension, and purchases made for the affected agency shall
26 be in accordance with the requirements of section 17-24-111 (1). ~~C.R.S.~~

27 (3) The ~~heads of purchasing agencies~~ PROCUREMENT OFFICIALS

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

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

16 **24-102-501. Collection of data concerning public procurement.**

17 All using agencies shall furnish such reports as the ~~executive director~~
18 CHIEF PROCUREMENT OFFICER may require concerning usage, needs, and
19 stocks on hand, and the executive director shall have authority to
20 prescribe forms to be used by the using agencies in the requisitioning,
21 ordering, and reporting of supplies, services, and construction.

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

24 **24-103-201. Methods of source selection.** (1) Unless otherwise
25 authorized by law, all state contracts shall be awarded ~~by competitive~~
26 ~~sealed bidding pursuant to section 24-103-202, except as provided in:~~

27 (a) SECTION 24-103-202, CONCERNING AWARDS SOLICITED BY AN

- 1 INVITATION FOR BIDS;
- 2 (a) (b) Section 24-103-203, concerning awards ~~by competitive~~
3 ~~sealed proposals~~ SOLICITED BY A REQUEST FOR PROPOSALS;
- 4 (a.5) (c) Section 24-103-202.3, concerning ~~competitive sealed best~~
5 ~~value bidding~~ AWARDS SOLICITED BY AN INVITATION FOR BEST VALUE
6 BIDS;
- 7 (b) (d) Section 24-103-204, concerning small purchases;
- 8 (c) (e) Section 24-103-205, concerning sole source procurements;
- 9 (d) (f) Section 24-103-206, concerning emergency procurements;
- 10 (e) (g) Part 14 of article 30 of this ~~title~~ TITLE 24, concerning
11 architect, engineer, landscape architect, and land surveying services;
- 12 (f) (h) Section 24-103-208, concerning other procurement
13 methods; OR
- 14 (g) (i) Part 2 of article 38 of this ~~title~~ TITLE 24, concerning
15 public-private initiatives.

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

18 **24-103-201.5. Market research - request for information.**

- 19 (1) A PROCUREMENT OFFICIAL MAY CONDUCT MARKET RESEARCH PRIOR
20 TO SELECTING A METHOD OF SOURCE SELECTION PURSUANT TO THIS PART
21 2. THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES IN ACCORDANCE
22 WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF THIS
23 TITLE 24, TO FURTHER DEFINE METHODS OF CONDUCTING MARKET
24 RESEARCH.
- 25 (2) A REQUEST FOR INFORMATION MAY BE USED AS A METHOD TO
26 OBTAIN PRELIMINARY INFORMATION ABOUT A MARKET OR TYPE OF
27 AVAILABLE SERVICE OR PRODUCT WHEN THERE IS NOT ENOUGH

1 INFORMATION READILY AVAILABLE TO WRITE AN ADEQUATE
2 SPECIFICATION OR STATEMENT OF WORK. A REQUEST FOR INFORMATION
3 MAY ASK FOR INPUT FROM POTENTIAL VENDORS TO ASSIST THE STATE IN
4 PREPARING A SPECIFICATION OR STATEMENT OF WORK FOR A SUBSEQUENT
5 SOLICITATION AND MAY ASK FOR PRICING INFORMATION ONLY WITH THE
6 PROVISION THAT SUCH INFORMATION WOULD BE SUBMITTED
7 VOLUNTARILY. THE REQUEST FOR INFORMATION MUST CLEARLY STATE
8 THAT NO AWARD WILL RESULT FROM THE REQUEST.

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

13 (4) ALL RESPONSES TO REQUESTS FOR INFORMATION ARE
14 CONFIDENTIAL UNTIL AFTER AN AWARD BASED ON A SUBSEQUENT
15 SOLICITATION HAS BEEN MADE OR UNTIL THE PROCUREMENT OFFICIAL
16 DETERMINES THAT THE STATE WILL NOT PURSUE A SOLICITATION BASED
17 ON THE REQUEST FOR INFORMATION. AFTER SUCH TIME, THE RESPONSES
18 TO A REQUEST FOR INFORMATION SHALL BE OPEN TO PUBLIC INSPECTION
19 IN ACCORDANCE WITH THE PROVISIONS OF THE "COLORADO OPEN
20 RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE 24.

21 **SECTION 16.** In Colorado Revised Statutes, 24-103-202, **amend**
22 (1), (6), (7), and (9); and **repeal** (2)(b) as follows:

23 **24-103-202. Invitation for bids.** (1) Contracts shall be awarded
24 ~~by competitive sealed bidding~~ SOLICITED BY AN INVITATION FOR BIDS
25 except as otherwise provided in section 24-103-201.

26 (2) (b) ~~An invitation for bids for a contract for the purchase of~~
27 ~~supplies shall also state the required procedures and criteria for awarding~~

1 ~~the contract as provided in section 24-103-202.5 if low tie bids are~~
2 ~~received.~~

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

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

25 (9) The provisions of subsections (4), (5), and (6) of this section
26 shall also apply to construction and shall be in addition to any other
27 requirements for ~~competitive sealed bidding~~ AN INVITATION FOR BIDS for

1 construction as provided for in this ~~title~~ TITLE 24.

2 **SECTION 17.** In Colorado Revised Statutes, **amend**
3 24-103-202.3 as follows:

4 **24-103-202.3. Invitation for best value bids.** (1) When,
5 pursuant to rules, ~~the state purchasing director, the head of a purchasing~~
6 ~~agency, or a designee of either officer who is in a higher ranking~~
7 ~~employment position than a procurement officer~~ THE CHIEF
8 PROCUREMENT OFFICER OR A PROCUREMENT OFFICIAL determines in
9 writing that the use of ~~competitive sealed~~ AN INVITATION FOR best value
10 ~~bidding~~ BIDS is advantageous to the state, a contract may be ~~entered into~~
11 ~~by competitive sealed~~ SOLICITED BY INVITATION FOR best value ~~bidding~~
12 BIDS.

13 (2) An invitation for ~~bids under competitive sealed~~ best value
14 ~~bidding~~ BIDS shall be made in the same manner as provided in section
15 24-103-202 (2), (3), and (4).

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

26 (b) Prices for enhancements, options, or alternatives to the bid
27 may be evaluated by the ~~state purchasing director or the head of a~~

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

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

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

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

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

26 (4) The contract shall be awarded with reasonable promptness by
27 written notice to the ~~low responsible bidder whose bid meets the~~

1 ~~requirements and criteria set forth in the invitation for bids except as~~
2 ~~otherwise provided for certain low tie bids under section 24-103-202.5~~
3 ~~PROVIDES FOR A CONTRACT WITH THE BEST VALUE AT THE LOWEST COST~~
4 ~~TO THE STATE.~~

5 **SECTION 18.** In Colorado Revised Statutes, 24-103-203, **amend**
6 **(1), (7), and (8); and repeal (4)** as follows:

7 **24-103-203. Requests for proposals.** (1) ~~When, pursuant to~~
8 ~~rules, the executive director, the head of a purchasing agency, or a~~
9 ~~designee of either officer who is in a higher ranking employment position~~
10 ~~than a procurement officer determines in writing that the use of~~
11 ~~competitive sealed bidding is either not practicable or not advantageous~~
12 ~~to the state; A contract may be entered into by competitive sealed~~
13 ~~REQUESTS FOR proposals. Competitive sealed REQUESTS FOR proposals~~
14 ~~may be used for the procurement of professional services. whether or not~~
15 ~~the determination described by this subsection (1) has been made. The~~
16 ~~executive director may provide by rule that it is neither practicable nor~~
17 ~~advantageous to the state to procure specified types of supplies, services,~~
18 ~~or construction by competitive sealed bidding AN INVITATION FOR BIDS.~~

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

24 (7) The award shall be made to the responsible offeror whose
25 proposal is determined in writing to be the most advantageous to the state,
26 taking into consideration the price and the evaluation factors set forth in
27 the request for proposals. No other factors or criteria shall be used in the

1 evaluation. The contract file shall contain the basis on which the award
2 is made. ~~A contract resulting from a competitive sealed proposal is not~~
3 ~~awarded until any protest made in connection with the proposal has been~~
4 ~~resolved pursuant to 24-109-102.~~ No property interest of any nature shall
5 accrue until the contract is awarded and signed by both parties.

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

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

14 **24-103-205. Sole source procurement.** A contract may be
15 awarded for a supply, service, or construction item without competition
16 when, under rules, the executive director, the ~~head of a purchasing agency~~
17 CHIEF PROCUREMENT OFFICER, THE PROCUREMENT OFFICIAL, or a designee
18 of ~~either~~ ANY SUCH officer ~~who is in a higher ranking employment~~
19 ~~position than a procurement officer~~ determines in writing that there is
20 only one source for the required supply, service, or construction item.
21 ~~Sole source procurement provisions shall not be used when the goods or~~
22 ~~services needed are available through the division of correctional~~
23 ~~industries unless the purchasing agency specifies the division of~~
24 ~~correctional industries as the sole source provider.~~

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

27 **24-103-206. Emergency procurements.** Notwithstanding any

1 other provision of this code, the executive director, ~~THE CHIEF~~
2 ~~PROCUREMENT OFFICER~~, ~~the head of a purchasing agency~~ PROCUREMENT
3 OFFICIAL, or a designee of ~~either ANY SUCH~~ officer may make or authorize
4 others to make emergency procurements when there exists a threat to
5 public health, welfare, or safety under emergency conditions, as defined
6 in rules, but such emergency procurements shall be made with such
7 competition as is practicable under the circumstances. A written
8 determination of the basis for the emergency and for the selection of the
9 particular contractor shall be included in the contract file.

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

12 **24-103-301. Cancellation of invitations for bids or requests for**
13 **proposals.** An invitation for bids, a request for proposals, or any other
14 solicitation may be cancelled or any or all bids or proposals may be
15 rejected in whole or in part ~~as may be specified in the solicitation~~ AT ANY
16 TIME BEFORE A CONTRACT IS EXECUTED when it is in the best interests of
17 the state pursuant to rules. The reasons therefor shall be made part of the
18 contract file BUT SHALL REMAIN CONFIDENTIAL AND SHALL NOT BE
19 SUBJECT TO THE PROVISIONS OF THE "COLORADO OPEN RECORDS ACT",
20 PART 2 OF ARTICLE 72 OF THIS TITLE 24, FOR THE LESSER OF SIX MONTHS
21 OR UNTIL THE CONTRACT AT ISSUE IS AWARDED.

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

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

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

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

8 (a) The pricing of any contract awarded by ~~competitive sealed~~
9 ~~REQUESTS FOR proposals AS SPECIFIED IN section 24-103-203,~~ or pursuant
10 to the sole source procurement authority ~~AS SPECIFIED IN section~~
11 ~~24-103-205,~~ where the total contract price is expected to exceed an
12 amount established by rule; or

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

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

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

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

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

27 **24-103-701. Finality of determinations.** The determinations

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

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

7 **24-103-803. Nonprofit agencies - self-certified vendor list -**
8 **creation.** (2) The department shall accept applications from any
9 nonprofit agency that seeks to become a self-certified vendor to bid on
10 certain services solicitations. In order for a nonprofit agency to become
11 a self-certified vendor, the nonprofit agency shall certify that:

12 (b) ~~The nonprofit agency is registered on the centralized supplier~~
13 ~~database of all businesses that are interested in providing goods and~~
14 ~~services to the state, which database is created by the executive director~~
15 ~~of the department of personnel pursuant to section 24-102-202.5;~~

16 (3) The department shall create and maintain a list of all nonprofit
17 agencies that have attained self-certified vendor status and shall make the
18 list available to the department of personnel ~~The department of personnel~~
19 ~~shall distribute the list to each state agency.~~ PURSUANT TO RULES
20 PROMULGATED BY THE EXECUTIVE DIRECTOR.

21 (4) A nonprofit agency's self-certified vendor status is valid for
22 ~~one year~~ UP TO FIVE YEARS after the date that the nonprofit agency's
23 self-certification application was approved. ~~After one year,~~ A nonprofit
24 agency is required to reapply to the department, AT A TIME AND IN A
25 MANNER DETERMINED BY THE DEPARTMENT, for self-certified vendor
26 status to be eligible to respond to a set aside solicitation pursuant to this
27 part 8.

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

3 **24-103-804. Services solicitations - categorical identification.**

4 (1) (a) The department of personnel shall publish a list of the services
5 that state agencies seek through services solicitations and shall make the
6 list available to nonprofit agencies on an annual basis. ~~As part of a~~
7 ~~nonprofit agency's application to become a self-certified vendor pursuant~~
8 ~~to section 24-103-803, the nonprofit agency shall specify the tasks and~~
9 ~~activities that it is able to perform for state agencies based on the list~~
10 ~~created by the department of personnel.~~ THE EXECUTIVE DIRECTOR SHALL
11 PROMULGATE RULES REGARDING THE PROCESS FOR REVIEW,
12 DETERMINATIONS, AND PUBLICATION OF A LIST THAT SHALL BE REFERRED
13 TO AS THE SERVICES SET ASIDE LIST.

14 (b) ~~The department shall review each application submitted~~
15 ~~pursuant to paragraph (a) of this subsection (1) and create a list of the~~
16 ~~types of tasks and activities that it deems appropriate for a self-certified~~
17 ~~vendor to perform. The department shall create an initial tasks and~~
18 ~~activities list within ninety days after August 5, 2008, and shall review~~
19 ~~and update the list at least annually.~~

20 (2) ~~After creating the tasks and activities list pursuant to~~
21 ~~subsection (1) of this section, the department shall meet with the state~~
22 ~~purchasing director or the director's designee to determine the types of~~
23 ~~services solicitations that would involve some or all of the tasks or~~
24 ~~activities specified on the list and that could be successfully performed by~~
25 ~~self-certified vendors. The department and the state purchasing director~~
26 ~~or the director's designee shall solicit input from the purchasing director~~
27 ~~of each state agency regarding the nature of services for which the state~~

1 agency periodically issues solicitations for bids and the type of services
2 that the state agency believes could be successfully performed by a
3 self-certified vendor. Within ninety days after the establishment of the list
4 of tasks and activities created pursuant to subsection (1) of this section,
5 the department shall create a list of the types of services solicitations that
6 it deems appropriate for a self-certified vendor to perform. The list shall
7 be referred to as the "services set aside list". The department shall review
8 and update the list at least annually.

9 (3) The department shall provide the services set aside list to the
10 state purchasing director. The state purchasing director shall provide the
11 services set aside list to the purchasing director of each state agency and
12 shall make the list available to any nonprofit agency that is self-certified
13 to bid on services solicitations pursuant to this part 8.

14 **SECTION 27.** In Colorado Revised Statutes, 24-103-805, **amend**
15 (1), (5), (6), and (7) as follows:

16 **24-103-805. Contract set asides - bid process created by**
17 **department of personnel - obligation of state agencies - rules.**

18 (1) (a) Any state agency that intends to solicit bids for a service that is
19 included on the services set aside list created pursuant to section
20 24-103-804 shall first solicit bids from self-certified vendors for such
21 service and shall follow the procedures specified in ~~this subsection (1)~~
22 RULES PROMULGATED BY THE EXECUTIVE DIRECTOR.

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

1 FACTORS OTHER THAN PRICE ALONE.

2 (b) (c) If one self-certified vendor bids on the solicitation for the
3 services, the ~~purchasing director of the state agency~~ PROCUREMENT
4 OFFICIAL shall award a contract to the self-certified vendor and shall
5 ensure that the contract is awarded at a fair and reasonable price of up to
6 fifteen percent above the fair market value of the services, subject to
7 available appropriations.

8 (e) (d) If the state agency does not receive a bid from any
9 self-certified vendor for the services, the state agency is permitted to
10 procure the services through other approved procurement methods and
11 shall not be subject to the requirements of this part 8 for that specific
12 solicitation.

13 (5) The department of personnel ~~shall~~ MAY promulgate rules to
14 implement the requirements of this section pursuant to section
15 24-102-101. Such rules shall be promulgated in accordance with the
16 provisions of article 4 of this ~~title~~ TITLE 24.

17 (6) Any ~~state agency~~ SELF-CERTIFIED VENDOR that has BEEN
18 awarded a solicitation for services ~~to a self-certified vendor~~ BY A STATE
19 AGENCY pursuant to this part 8 shall report to the ~~department of personnel~~
20 CHIEF PROCUREMENT OFFICER regarding the progress of the ~~solicitation~~
21 AWARD AND THE CONTRACT in a manner and frequency to be determined
22 by the ~~department of personnel~~ CHIEF PROCUREMENT OFFICER. THE
23 VENDOR SHALL INCLUDE IN THE REPORT THE PERCENTAGE OF THE TOTAL
24 CONTRACT PRICE THAT IT WILL SPEND ON THE SALARY OR WAGES OF THE
25 EMPLOYEES HIRED TO PERFORM THE SERVICES SOLICITATION, NOT
26 INCLUDING THE SALARY OR WAGES FOR ADMINISTRATIVE STAFF OR
27 EMPLOYEES.

1 procurement officer AGENT who is not an employee of that procurement
2 officer's AGENT'S agency; and

3 (II) Give the bidders at least five business days' written notice by
4 certified mail of the date the determination will be made, of the procedure
5 for making the determination, and that the bidders or the bidders'
6 representatives may be present when the determination is made;

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

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

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

18 **24-103-903. [Formerly 24-103-207] State purchases of recycled**
19 **paper and recycled products - definitions.** (1) When purchasing paper
20 and paper products, ~~the executive director or any purchasing agent~~
21 PROCUREMENT AGENT shall, whenever the price is competitive and the
22 quality adequate for the purpose intended, purchase recycled paper, as
23 defined in section 13-1-133 (4)(d). ~~C.R.S.~~

24 (2) For the fiscal year 1990-91, the executive director shall
25 establish as a goal that at least ten percent of the total volume of paper
26 and paper products purchased by the state shall contain recycled paper.
27 The goal shall increase to twenty percent for the fiscal year 1991-92, to

1 thirty percent for the fiscal year 1992-93, to forty percent for the fiscal
2 year 1993-94, and to fifty percent for the fiscal year 1994-95, and for each
3 fiscal year thereafter.

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

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

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

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

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

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

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

1 **24-103-904. [Formerly 24-103-207.5] Purchasing preference**

2 **for environmentally preferable products - definitions.** (1) As used in
3 this section, unless the context otherwise requires, "environmentally
4 preferable products" means products that have a lesser or reduced adverse
5 effect on human health and the environment when compared with
6 competing products that serve the same purpose. The product comparison
7 may consider such factors as the availability of any raw materials used in
8 the product being purchased and the availability, use, production, safe
9 operation, maintenance, packaging, distribution, disposal, or recyclability
10 of the product being purchased.

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

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

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

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

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

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

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

12 ~~(f) (Deleted by amendment, L. 2008, p. 575, § 1, effective August~~
13 ~~5, 2008.)~~

14 (4) If the bid price for environmentally preferable products
15 exceeds the bid price for products that are not environmentally preferable
16 by more than five percent, a governmental body may award the contract
17 to a bidder who offers environmentally preferable products where the
18 governmental body demonstrates, on the basis of assessments such as the
19 costs of ownership and a life-cycle analysis, that long-term savings to the
20 state will result from environmentally preferable purchasing in
21 accordance with the requirements of this section. Nothing in this section
22 shall require that a governmental body perform an analysis of the costs of
23 ownership or a life-cycle analysis in connection with the purchase of any
24 products.

25 (5) (a) Any bidder that seeks to qualify for the preference created
26 by subsection (2) of this section shall provide documentation to the
27 governmental body inviting the bid that the products offered by the bidder

1 are environmentally preferable. This requirement may be satisfied by
2 submission of any of the following:

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

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

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

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

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

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

1 (7) (6) In connection with any cost of ownership analysis or
2 life-cycle analysis undertaken in connection with any purchase under this
3 section of a product that involves the replacement of existing electrical,
4 natural gas, or steam service, the cost analysis shall consider any stranded
5 utility costs.

6 **24-103-905. [Formerly 24-103-211] Service-disabled**
7 **veteran-owned small businesses - state procurement preference -**
8 **definitions.** (1) As used in this section, unless the context otherwise
9 requires:

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

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

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

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

25 (2) In awarding all contracts that are subject to this code, the state
26 shall have the goal of awarding at least three percent of all such contracts,
27 by dollar value, to service-disabled veteran-owned small businesses. To

1 satisfy this goal, a state agency may grant a preference for
2 service-disabled veteran-owned small businesses.

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

9 (4) On or before September 30, 2015, and on or before September
10 30 each year thereafter, the executive director shall submit a report
11 regarding the state's progress in satisfying the three percent goal
12 established in this section to the department of military and veterans
13 affairs, the members of the Colorado board of veterans affairs, and to the
14 members of the committees of the house of representatives and the senate
15 that have jurisdiction over state affairs and veterans affairs. The report
16 shall include the following:

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

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

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

1 dollar amount of contracts awarded by the state agency in the prior fiscal
2 year. and

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

8 **24-103-906. [Formerly 8-18-101] Bid preference - state**
9 **contracts.** (1) (a) Except as provided in ~~paragraph (b) of this subsection~~
10 ~~(1) SUBSECTION (1)(b) OF THIS SECTION and in section 8-18-103 SECTION~~
11 ~~24-103-907,~~ when a contract for commodities or services is to be awarded
12 to a bidder, a resident bidder ~~as defined in section 8-19-102 (2)~~ shall be
13 allowed a preference against a nonresident bidder equal to the preference
14 given or required by the state in which the nonresident bidder is a
15 resident.

16 (b) Notwithstanding ~~paragraph (a) of this subsection (1)~~
17 ~~SUBSECTION (1)(a) OF THIS SECTION,~~ when an invitation for bids for a
18 contract for the purchase of commodities results in a low tie bid, ~~as~~
19 ~~defined in section 24-103-101, C.R.S.,~~ the provisions of ~~section~~
20 ~~24-103-202.5, C.R.S. SECTION 24-103-902,~~ apply.

21 (c) For the purposes of this subsection (1), "commodities"
22 includes supplies as defined in ~~section 24-101-301 (22), C.R.S. SECTION~~
23 ~~24-101-301 (47).~~

24 (2) If it is determined by the ~~officer~~ PROCUREMENT AGENT
25 responsible for awarding the bid that compliance with this section may
26 cause denial of federal moneys which would otherwise be available or
27 would otherwise be inconsistent with requirements of federal law, this

1 section shall be suspended, but only to the extent necessary to prevent
2 denial of the moneys or to eliminate the inconsistency with federal
3 requirements.

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

6 **24-103-907. [Formerly 8-18-103] Preference for state**
7 **agricultural products.** (1) When purchasing agricultural products, a
8 governmental body ~~as defined in section 24-101-301 (10), C.R.S.~~, shall
9 award the contract to a resident bidder ~~as defined in section 8-19-102 (2),~~
10 who produces products in the state, subject to the conditions in subsection
11 (2) of this section.

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

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

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

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

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

25 (II) For purposes of this ~~paragraph (d)~~ SUBSECTION (2)(d),
26 "reasonably exceeds" shall occur when the head of the governmental
27 body, or other public officer charged by law with the duty to purchase

1 such products, at his or her sole discretion, determines such higher bid to
2 be reasonable and capable of being paid out of that governmental body's
3 existing budget, without any further supplemental or additional
4 appropriation.

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

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

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

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

19 **24-103-908. Bid preferences - resident bidder - public projects**
20 **- report - federal and state law - definitions. (1) [Formerly 8-19-102]**

21 As used in this ~~article~~ SECTION, unless the context otherwise requires,

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

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

25 ~~(a) Any public project as defined in section 24-92-102 (8), C.R.S.,~~
26 ~~including any such project awarded by any county, including any home~~
27 ~~rule county, municipality, as defined in section 31-1-101 (6), C.R.S.,~~

1 school district, special district, or other political subdivision of the state;

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

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

10 (3) "Resident bidder" means:

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

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

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

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

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

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

25 (b) **[Formerly 8-19-101 (2)]** If it is determined by the officer
26 PROCUREMENT AGENT responsible for awarding the bid that compliance
27 with this section may cause denial of federal moneys which would

1 otherwise be available or would otherwise be inconsistent with
2 requirements of federal law, this section shall be suspended, but only to
3 the extent necessary to prevent denial of the moneys or to eliminate the
4 inconsistency with federal requirements.

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

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

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

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

6 (4) [Formerly 8-19-105] Nothing in this ~~article~~ SECTION applies
7 to any project that receives federal moneys. In addition, nothing in this
8 ~~article~~ SECTION contravenes any existing treaty, law, agreement, or
9 regulation of the United States. Contracts entered into in accordance with
10 any treaty, law, agreement, or regulation of the United States do not
11 violate this ~~article~~ SECTION to the extent of that accordance. The
12 requirements of this ~~article~~ SECTION are suspended if such requirement
13 would contravene any treaty, law, agreement, or regulation of the United
14 States, or would cause denial of federal moneys or preclude the ability to
15 access federal moneys that would otherwise be available.

16 **24-103-909. [Formerly 8-19.5-101] Bid preference - recycled**
17 **plastic products.** (1) When a contract is to be awarded ~~in a public~~
18 ~~project~~ PURSUANT TO THIS CODE, a bidder who has used recycled plastics
19 in the manufacture of the commodity or supplies described in the bid shall
20 be allowed a preference of up to five percent for finished products which
21 contain no less than ten percent recycled plastics.

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

1 requirements.

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

6 **24-103-910. [Formerly 24-103-210] Use of foreign-produced**
7 **goods - iron, steel, and related manufactured products - disclosure -**
8 **report - definitions.** (1) The contractor for any public works project that
9 is funded by a state agency as defined in section 24-30-1301 (17) or by a
10 state institution of higher education as defined in section 24-30-1301 (18),
11 that does not receive any federal moneys, and that costs more than five
12 hundred thousand dollars shall, upon completion of the project, make a
13 good faith effort to disclose to the department of personnel the five most
14 costly goods incorporated into the project, including iron, steel, or related
15 manufactured goods; except that, for public projects under the
16 supervision of the department of transportation, the contractor shall
17 disclose such information to the department of transportation.

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

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

25 (c) In order for a manufactured good to be considered subject to
26 disclosure under this ~~article~~ ARTICLE 103, the product must be
27 manufactured predominantly of steel or iron. The manufactured good is

1 deemed a product manufactured predominantly of steel or iron if the
2 product consists of more than fifty percent steel or iron content when it
3 is delivered to the job site for installation.

4 (3) The disclosure must state the total cost and country of origin
5 of the five most costly goods used on a project, including iron, steel, and
6 related manufactured goods described pursuant to subsections (1) and (2)
7 of this section. The contractor may rely on documents provided by
8 third-party vendors when disclosing the country of origin of iron, steel,
9 or related manufactured goods. In addition, the disclosure must state
10 whether the public works project was subject to any existing domestic
11 content preference, including 41 U.S.C. secs. 8301 to 8305, 23 U.S.C.
12 sec. 313, 49 U.S.C. sec. 5323, 49 U.S.C. sec. 24305, 49 U.S.C. sec.
13 24405, and 49 U.S.C. secs. 50101 to 50105. The contractor shall disclose
14 the information in a manner to be determined by the department.

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

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

26 (a) "Country of origin" shall have the meaning ascribed to it under
27 19 U.S.C. sec. 1304 and 19 CFR 134.

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

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

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

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

17 **24-104-201. Executive director - rules.** The executive director
18 ~~shall~~ MAY promulgate rules governing the preparation, maintenance, and
19 content of specifications for supplies, services, and construction required
20 by the state.

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

23 **24-104-202. Duties of the chief procurement officer -**
24 **specifications.** The ~~executive director~~ CHIEF PROCUREMENT OFFICER shall
25 prepare, issue, revise, maintain, and monitor the use of specifications for
26 supplies, services, and construction required by the state.

27 **SECTION 31.** In Colorado Revised Statutes, **amend** 24-104-204

1 as follows:

2 **24-104-204. Relationship with using agencies.** The executive
3 ~~director~~ CHIEF PROCUREMENT OFFICER may obtain expert advice and
4 assistance from personnel of using agencies in the development of
5 specifications and may delegate, in writing, to a using agency the
6 authority to prepare and utilize its own specifications.

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

9 **24-104-208. [Formerly 24-103-209] Purchase of compost by**
10 **governmental bodies - definitions.** (1) In addition to any other
11 applicable requirement specified in the code, no compost may be
12 purchased by a governmental body ~~as defined in section 24-101-301,~~
13 unless the compost satisfies minimum standards specified by the
14 department of agriculture.

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

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

22 **24-105-101. Responsibility for selection of methods of**
23 **construction contracting management.** The executive director ~~shall~~
24 MAY promulgate rules providing for as many alternative methods of
25 construction contracting management as he OR SHE may determine to be
26 feasible. These rules ~~shall~~ MAY set forth criteria to be used in determining
27 which method of construction contracting management is to be used for

1 a particular project, grant to the head of a division within the department
2 or the ~~head of a purchasing agency which~~ PROCUREMENT OFFICIAL WHO
3 is responsible for carrying out the construction project the discretion to
4 select the appropriate method of construction contracting management for
5 a particular project, and require the procurement ~~officer~~ AGENT to execute
6 and include in the contract file a written statement setting forth the facts
7 which led to the selection of a particular method of construction
8 contracting management for each project.

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

11 **24-105-201. Bid security.** (1) Bid security shall be required for
12 all ~~competitive sealed bidding~~ INVITATIONS FOR BIDS for construction
13 contracts when the price is estimated by the procurement ~~officer~~ AGENT
14 to exceed fifty thousand dollars. Bid security shall be a bond provided by
15 a surety company authorized to do business in this state, the equivalent in
16 cash, or otherwise supplied in a form satisfactory to the state. Nothing in
17 this subsection (1) prevents the requirement of such bonds on
18 construction contracts under fifty thousand dollars.

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

21 **24-105-301. Contract clauses and their administration.**

22 (1) The executive director ~~shall~~ MAY promulgate rules requiring the
23 inclusion in state construction contracts of clauses providing for
24 adjustments in prices, time of performance, and other appropriate contract
25 provisions affected by and covering the following subjects:

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

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

7 (4) The contract clauses promulgated under this section ~~shall~~ MAY
8 be set forth in rules; except that such rules shall be consistent with section
9 24-91-103.5 (1) and (2) AND SECTION 24-30-1303 (1)(s)(IV). ~~However,~~
10 ~~the head of a division within the department designated by the executive~~
11 ~~director or the head of a purchasing agency may vary the clauses for~~
12 ~~inclusion in any particular state construction contract so long as any~~
13 ~~variations are supported by a written determination that describes the~~
14 ~~circumstances justifying such variations and notice of any material~~
15 ~~variation is stated in the invitation for bids or request for proposals. No~~
16 ~~variation that is inconsistent with section 24-91-103.5 (1) and (2) shall be~~
17 ~~made pursuant to this subsection (4).~~

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

20 **24-105-302. Fiscal responsibility.** Every contract modification
21 ~~change order~~, or contract price adjustment under a construction contract
22 with the state in excess of an amount specified in the contract shall be
23 subject to prior written certification by the controller or other official
24 responsible for monitoring and reporting upon the status of the costs of
25 the total project or contract budget as to the effect of the contract
26 modification ~~change order~~, or adjustment in contract price on the total
27 project or contract budget. In the event that the certification of the

1 controller or other responsible official discloses a resulting increase in the
2 total project or contract budget, the procurement officer AGENT shall not
3 execute or make such contract modification ~~change order~~, or adjustment
4 in contract price unless sufficient funds are available therefor or the scope
5 of the project or contract is adjusted so as to permit the degree of
6 completion that is feasible within the total project or contract budget as
7 it existed prior to the contract modification ~~change order~~, or adjustment
8 in contract price under consideration; except that, with respect to the
9 validity of any executed contract modification ~~change order~~, or
10 adjustment in contract price which the contractor has reasonably relied
11 upon, it shall be presumed that there has been compliance with the
12 provisions of this section.

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

15 **24-106-101. Contract clauses - price adjustments - additional**
16 **clauses - modification.** (3) The executive director may promulgate rules
17 including, but not limited to, rules permitting or requiring the inclusion
18 in state contracts of clauses providing for appropriate remedies and
19 covering the following subjects:

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

22 (4) Any contract clauses promulgated under this section ~~shall~~ MAY
23 be set forth in rules; except that such rules shall be consistent with section
24 24-91-103.5 (1) and (2). However, the executive director or the ~~head of~~
25 ~~a purchasing agency~~ PROCUREMENT OFFICIAL may vary the clauses for
26 inclusion in any particular state contract so long as any variations are
27 supported by a written determination that describes the circumstances

1 justifying such variations and notice of any material variation is stated in
2 the invitation for bids or request for proposals. No variation that is
3 inconsistent with section 24-91-103.5 (1) and (2) shall be made pursuant
4 to this subsection (4).

5 **SECTION 38.** In Colorado Revised Statutes, **add with amended**
6 **and relocated provisions** 24-106-102, 24-106-103, 24-106-104,
7 24-106-105, 24-106-106, 24-106-107, and 24-106-108 as follows:

8 **24-106-102. [Formerly 24-101-103] Supplementary general**
9 **principles of law applicable.** Unless displaced by the particular
10 provisions of this code, the principles of law and equity, including the
11 "Uniform Commercial Code", the law merchant, and any law relative to
12 capacity to contract, agency, fraud, misrepresentation, duress, coercion,
13 mistake, or bankruptcy shall supplement the provisions of this code.

14 **24-106-103. [Formerly 24-102-205] Centralized contract**
15 **management system - personal services contracts - legislative**
16 **declaration - definitions.** (1) (a) The general assembly hereby finds and
17 declares that by enacting this section the general assembly intends to
18 CENTRALIZE THE LOCATION OF INFORMATION ABOUT PERSONAL SERVICES
19 CONTRACTS AND PROVIDE FOR LEGISLATIVE, EXECUTIVE, AND PUBLIC
20 ACCESS TO ALL PERSONAL SERVICES CONTRACTS ENTERED INTO BY ANY
21 GOVERNMENTAL BODY.

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

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

27 ~~(III) Centralize the location of information about personal services~~

1 ~~contracts for the purpose of facilitating public review of such contracts;~~
2 ~~and~~

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

5 (b) For purposes of this section, "governmental body" shall have
6 the same meaning as set forth in ~~section 24-101-301 (10)~~ SECTION
7 24-101-301 (18); except that, for purposes of this section, "governmental
8 body" shall also include elected officials.

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

11 (2) This section shall apply to any personal services contract to
12 which the state is a party the value of which exceeds one hundred
13 thousand dollars with the exception of any contract to which the state is
14 a party under medicare, the "Colorado Medical Assistance Act", articles
15 4 to 6 of title 25.5, ~~C.R.S.~~, the "Children's Basic Health Plan Act", article
16 8 of title 25.5, ~~C.R.S.~~, or the "Colorado Indigent Care Program", part 1 of
17 article 3 of title 25.5. ~~C.R.S.~~

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

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

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

1 contracting;

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

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

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

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

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

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

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

26 ~~(X)~~ (VIII) Upon completion of the personal services contract, the
27 extent as disclosed by the vendor to which any services under the

1 contract, or any subcontracts to the contract that directly relate to the
2 services provided under the contract, were performed outside the United
3 States or the state.

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

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

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

1 ~~the contract.~~

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

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

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

25 ~~(b) Notwithstanding the requirements of paragraph (a) of this~~
26 ~~subsection (5), the director of a governmental body or his or her designee~~
27 ~~may enter into or authorize others to enter into an emergency sole-source~~

1 personal services contract on behalf of the governmental body where an
2 emergency condition is present and a sole-source personal services
3 contract is necessary to ensure that the required services are obtained in
4 sufficient time to address the emergency. Where the governmental body
5 enters into an emergency sole-source personal services contract pursuant
6 to this paragraph (b), the centralized contract management system
7 required by paragraph (a) of subsection (3) of this section, and any
8 contract file maintained thereunder, shall include a written determination
9 that specifies the basis for the determination that an emergency condition
10 is present and the basis for the selection of the vendor retained to perform
11 the sole-source contract. A sole-source personal services contract
12 authorized pursuant to this paragraph (b) shall be limited to the quantity
13 of personal services and duration necessary to address the emergency.

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

20 (6) Upon the completion of each personal services contract, the
21 governmental body that was a party to the contract shall evaluate the
22 vendor that performed the contract. The evaluation performed by the
23 governmental body shall be submitted to the vendor to allow the vendor
24 to review the evaluation and to submit any comments in response to the
25 evaluation, after which point the evaluation, including any response
26 submitted by the vendor, shall be added to the centralized contract
27 management system maintained by the department pursuant to paragraph

1 ~~(a) of subsection (3) of this section. The evaluation shall become publicly~~
2 ~~available thirty days after completion of the contract. The evaluation shall~~
3 ~~measure, without limitation, the performance of the vendor in meeting~~
4 ~~contractual requirements relating to quality, cost, and deadlines. If the~~
5 ~~vendor disputes any information contained in the evaluation, the vendor~~
6 ~~may exercise the contract dispute rights specified in section 24-109-106,~~
7 ~~24-109-107, 24-109-201, or 24-109-202. If, upon completion of an appeal~~
8 ~~filed with the executive director or the Denver district court, as~~
9 ~~applicable, the vendor is not satisfied with the resolution of the appeal,~~
10 ~~the vendor may file a rebuttal statement that shall be maintained as part~~
11 ~~of the vendor evaluation record. The vendor's sole remedy in contesting~~
12 ~~any evaluation shall be removal of the evaluation, correction of the~~
13 ~~evaluation, or submission of the rebuttal statement in accordance with the~~
14 ~~requirements of this subsection (6).~~

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

20 ~~(b) The department shall annually report information on personal~~
21 ~~services contracts contained in the centralized contract management~~
22 ~~system created in paragraph (a) of subsection (3) of this section to the~~
23 ~~standing legislative committees of reference in each house of the general~~
24 ~~assembly with oversight responsibilities over the department's affairs.~~

25 ~~(c) With respect to any sole-source personal services contract~~
26 ~~identified in the system required to be maintained by the department~~
27 ~~pursuant to paragraph (a) of subsection (3) of this section, the department~~

1 shall submit an annual report to the legislative council of the general
2 assembly created in section 2-3-301 (1), C.R.S., concerning any new
3 contract entered into by the state during the prior calendar year. Each
4 report shall describe, without limitation, the following:

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

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

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

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

21 **24-106-104. [Formerly 24-103-501] Types of contracts.** Subject
22 to the limitations of this section, any type of contract which will promote
23 the best interests of the state may be used; except that the use of a
24 cost-plus-a-percentage-of-cost contract is prohibited. A
25 CONTINGENCY-BASED CONTRACT MAY BE USED ONLY UPON APPROVAL BY
26 THE GOVERNOR'S OFFICE OF STATE PLANNING AND BUDGETING PURSUANT
27 TO SECTION 24-17-204. A cost-reimbursement contract may be used only

1 when a determination is made in writing that such contract is likely to be
2 less costly to the state than any other type of contract or that it is
3 impracticable to obtain the supplies, services, or construction required
4 unless the cost-reimbursement contract is used.

5 **24-106-105. [Formerly 24-103-503] Multiyear contracts.**

6 (1) Unless otherwise provided by law, a contract for supplies or services
7 may be entered into for any period of time deemed to be in the best
8 interests of the state if the term of the contract and conditions of renewal
9 or extension, if any, are included in the solicitation and if funds are
10 available for the first year at the time of contracting. IF THE CHIEF
11 PROCUREMENT OFFICER DETERMINES THAT EXTENUATING CIRCUMSTANCES
12 EXIST AND AN EXTENSION OF THE CONTRACT BEYOND THE TERM INCLUDED
13 IN THE SOLICITATION IS IN THE BEST INTEREST OF THE GOVERNMENTAL
14 BODY, THEN THE CHIEF PROCUREMENT OFFICER MAY APPROVE A LONGER
15 TERM FOR A REASONABLE TIME BASED ON WHAT IS PRACTICABLE AND
16 NECESSARY GIVEN THE CIRCUMSTANCES. The state shall initiate the
17 renewal or extension of a contract for supplies or services. Payment and
18 performance obligations for succeeding fiscal years shall be subject to the
19 availability and appropriation of funds therefor.

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

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

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

27 (3) When funds are not appropriated or otherwise made available

1 to support continuation of performance in a subsequent fiscal year, the
2 contract shall be cancelled, and the contractor may be reimbursed for the
3 reasonable value of any nonrecurring costs incurred but not amortized in
4 the price of the supplies or services delivered under the contract.

5 **24-106-106. [Formerly 24-103-601] Right to audit records.**

6 ~~(1) (Deleted by amendment, L. 2007, p. 1237, § 2, effective August 3,~~
7 ~~2007.)~~

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

19 **24-106-107. [Formerly 24-103.5-101] Monitoring of vendor**

20 **performance - definitions.** (1) ~~(a)~~ For purposes of this section,
21 "governmental body" ~~shall have~~ HAS the same meaning as set forth in
22 ~~section 24-101-301 (10)~~ SECTION 24-101-301 (18); except that, for
23 purposes of this section, "governmental body" shall also include elected
24 officials.

25 ~~(b) (Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p.~~
26 ~~1853, § 32, effective June 9, 2010.)~~

27 (2) Each personal services contract entered into pursuant to this

1 code with a value of one hundred thousand dollars or more shall contain:

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

9 (b) An accountability section that requires the vendor to report
10 regularly on achievement of the performance measures and standards
11 specified in the contract and that allows the governmental body to
12 withhold payment until successful completion of all or part of the contract
13 and the achievement of established performance standards. The
14 accountability section shall include a requirement that payment by the
15 governmental body to the vendor shall be made without delay upon
16 successful completion of all or any part of the contract in accordance with
17 the payment schedule specified in the contract or as otherwise agreed
18 upon by the parties.

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

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

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

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

17 ~~(5) (4) In the case of a contract that has been renewed in a~~
18 ~~subsequent fiscal year, the governmental body shall certify annually~~
19 ~~whether the vendor on any contract is complying with the terms of the~~
20 ~~contract. If the governmental body determines that the vendor has not~~
21 ~~complied with the contract terms, including but not limited to~~
22 ~~performance standards and measurable outcomes, the state MAY PURSUE~~
23 ~~REMEDIES IN ACCORDANCE WITH ARTICLE 109 OF THIS TITLE 24 AND shall~~
24 ~~be entitled to any remedy available under law in the case of contract~~
25 ~~nonperformance, including but not limited to termination of the contract~~
26 ~~and the return of any and all payments made to the vendor by the state~~
27 ~~under the contract; except that the recovery of any moneys by the state~~

1 shall be reduced by the value of any contractual benefits realized by the
2 state from partial performance by the vendor under the contract. If a
3 vendor is deemed to be in default under any one particular contract with
4 the state, the state may, upon a showing of good cause, declare any or all
5 other contracts it has entered into with the vendor to be in default.

6 ~~(6) The centralized contract management system required by~~
7 ~~section 24-102-205 (3) (a) shall include such information as will allow~~
8 ~~the executive director and the governmental body to evaluate the prior~~
9 ~~record of a particular vendor in meeting performance measures and~~
10 ~~standards under paragraph (a) of subsection (2) of this section in~~
11 ~~connection with a personal services contract to which it has been a party.~~
12 ~~If a particular vendor demonstrates a gross failure to meet such~~
13 ~~performance measures and standards in connection with one or more~~
14 ~~contracts to which it has been a party, the executive director, upon the~~
15 ~~request of and with a showing of good cause by a governmental body,~~
16 ~~may remove the name of the vendor from the database and prohibit the~~
17 ~~vendor from bidding on future contracts. Upon a showing of good cause~~
18 ~~by a vendor or governmental body, the executive director may reinstate~~
19 ~~the name of the vendor to the database. If a vendor disputes the removal~~
20 ~~of its name from the database or the prohibition of the vendor from~~
21 ~~bidding on future contracts, the vendor may exercise the debarment~~
22 ~~protest and appeal rights specified in section 24-109-105, 24-109-107,~~
23 ~~24-109-201, or 24-109-202. If, upon completion of an appeal filed with~~
24 ~~the executive director or the Denver district court, as applicable, the~~
25 ~~vendor is not satisfied with the resolution of the appeal, the vendor may~~
26 ~~file a rebuttal statement that shall be maintained as part of the vendor~~
27 ~~evaluation record. The vendor's sole remedy in contesting such removal~~

1 ~~or prohibition shall be reversal of the debarment or submission of the~~
2 ~~rebuttal statement in accordance with the requirements of this subsection~~
3 ~~(6):~~

4 ~~(7) (5) Notwithstanding any other provision of this section,~~
5 ~~(a) nothing in this section shall be construed to apply to any~~
6 ~~contract to which the state is a party under medicare, the "Colorado~~
7 ~~Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., the~~
8 ~~"Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., or the~~
9 ~~"Colorado Indigent Care Program", part 1 of article 3 of title 25.5. C.R.S.~~

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

13 **24-106-108. [Formerly 24-107-101] Administrative rules - cost**
14 **reimbursement.** The executive director may promulgate rules setting
15 forth cost principles which may be used to determine the allowability of
16 incurred costs for the purpose of reimbursing costs under contract
17 provisions which provide for the reimbursement of costs. ~~except that, if~~
18 ~~a written determination is approved by a person who is in a higher~~
19 ~~ranking employment position than a procurement officer, such cost~~
20 ~~principles may be modified by contract.~~

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

23 **24-106-109. Terms and conditions in contracts.** ANY TERM OR
24 CONDITION IN ANY CONTRACT ENTERED INTO BY THE STATE THAT
25 REQUIRES THE STATE TO INDEMNIFY OR HOLD HARMLESS ANOTHER
26 PERSON, EXCEPT AS OTHERWISE AUTHORIZED BY LAW, OR BY WHICH THE
27 STATE AGREES TO BINDING ARBITRATION OR ANY OTHER BINDING

1 EXTRA-JUDICIAL DISPUTE RESOLUTION PROCESS IN WHICH THE FINAL
2 RESOLUTION IS NOT DETERMINED BY THE STATE, OR BY WHICH THE STATE
3 AGREES TO LIMIT LIABILITY OF ANOTHER PERSON [REDACTED] FOR BODILY INJURY,
4 DEATH, OR DAMAGE TO TANGIBLE PROPERTY OF THE STATE CAUSED BY
5 THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH PERSON OR SUCH
6 PERSON'S EMPLOYEES OR AGENTS SHALL BE VOID AB INITIO; EXCEPT THAT
7 THE CONTRACT CONTAINING THAT TERM OR CONDITION SHALL OTHERWISE
8 BE ENFORCEABLE AS IF IT DID NOT CONTAIN SUCH TERM OR CONDITION.
9 ALL CONTRACTS ENTERED INTO BY THE STATE, EXCEPT FOR CONTRACTS
10 WITH ANOTHER GOVERNMENT, SHALL BE GOVERNED BY COLORADO LAW
11 NOTWITHSTANDING ANY TERM OR CONDITION TO THE CONTRARY.

12 [REDACTED]

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

15 **24-109-101.1. Definitions.** AS USED IN THIS ARTICLE 109, UNLESS
16 THE CONTEXT OTHERWISE REQUIRES:

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

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

1 ~~NONMATERIAL ISSUES TOGETHER WOULD PREJUDICE THE OUTCOME OF THE~~
2 ~~PROCUREMENT.~~

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

5 **24-109-101.5. [Formerly 24-109-101] Resolution of**
6 **controversies.** (1) ~~The head of a purchasing agency~~ PROCUREMENT
7 OFFICIAL or ~~a~~ HIS OR HER designee is authorized to settle and resolve any
8 questions regarding:

9 (a) Any protest concerning the solicitation or award of a contract;

10 (b) Debarment or suspension from consideration for award of
11 contracts; and

12 (c) Any controversy arising between the state and a contractor by
13 virtue of a contract between them, including, without limitation,
14 controversies based upon breach of contract, mistake, misrepresentation,
15 or any other cause for contract modification or rescission.

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

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

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

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

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

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

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

10 **24-109-103. Stay of procurements.** A CONTRACT RESULTING
11 FROM A REQUEST FOR PROPOSALS IS NOT AWARDED UNTIL ANY PROTEST
12 MADE IN CONNECTION WITH THE REQUEST FOR PROPOSALS HAS BEEN
13 RESOLVED PURSUANT TO SECTION 24-109-102 (2).

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

16 **24-109-105. Debarment and suspension.** (1) (a) After
17 reasonable notice to the person involved and reasonable opportunity for
18 that person to be heard, the ~~head of a purchasing agency~~ PROCUREMENT
19 OFFICIAL or a HIS OR HER designee, after consultation with the using
20 agency and the attorney general, shall have authority to debar a person for
21 any of the reasons set forth in subsection (2) of this section from
22 consideration for award of contracts. The debarment shall not be for a
23 period of more than three years; EXCEPT THAT, IF A PERSON IS CONVICTED
24 OF A CRIME SPECIFIED IN SUBSECTION (2) OF THIS SECTION, THE LENGTH OF
25 THE DEBARMENT PERIOD MUST EQUAL THE LENGTH OF THE CONFINEMENT
26 SENTENCE INCLUDING THE PERIOD OF MANDATORY PAROLE IF IMPOSED OR
27 THE LENGTH OF THE PROBATION SENTENCE.

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

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

19 **24-109-106. Resolution of contract and breach of contract**
20 **controversies - applicability - authority.** (1) This section applies to
21 controversies between the state and a contractor which arise under, or by
22 virtue of, a contract between them, including, without limitation,
23 controversies which are based upon breach of contract, mistake,
24 misrepresentation, or any other cause for contract modification or
25 rescission.

26 (1.5) WHEN A CONTROVERSY CANNOT BE RESOLVED BY MUTUAL
27 AGREEMENT, THE AGGRIEVED PARTY MAY SUBMIT THE CONTROVERSY TO

1 THE PROCUREMENT OFFICIAL. THE PROCUREMENT OFFICIAL OR HIS OR HER
2 DESIGNEE SHALL, WITHIN TWENTY BUSINESS DAYS AFTER RECEIVING A
3 WRITTEN REQUEST BY THE AGGRIEVED PARTY FOR A FINAL DECISION, ISSUE
4 A WRITTEN DECISION.

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

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

13 **24-109-107. Issuance and appeal of decision.** (1) The ~~head of~~
14 ~~a purchasing agency~~ PROCUREMENT OFFICIAL or a HIS OR HER designee
15 shall promptly issue a written decision WITHIN THE PERIODS SPECIFIED IN
16 THIS ARTICLE 109 regarding any protest, debarment or suspension, or
17 contract controversy if it is not settled by mutual agreement. The decision
18 shall state the reasons for the action taken and give notice to the ~~protestor,~~
19 ~~prospective contractor, or contractor~~ AGGRIEVED PARTY of his or her right
20 to administrative REVIEW OF ANY MATERIAL ISSUE and judicial ~~reviews~~
21 REVIEW as provided for in this ~~article~~ ARTICLE 109.

22 (2) A decision shall be effective unless ~~stayed or until~~ reversed on
23 appeal. A copy of the decision rendered under subsection (1) of this
24 section shall be mailed or otherwise furnished immediately to the
25 ~~protestor, prospective contractor, or contractor~~ AGGRIEVED PARTY. The
26 decision shall be final and conclusive unless the ~~protestor, prospective~~
27 ~~contractor, or contractor~~ AGGRIEVED PARTY appeals the decision to the

1 executive director or commences an action in court pursuant to this
2 ~~article.~~ Any ARTICLE 109. EXCEPT FOR APPEALS REFERRED TO THE OFFICE
3 OF ADMINISTRATIVE COURTS PURSUANT TO SECTION 24-109-201, AN
4 appeal from a decision under this section shall not be subject to the
5 provisions of section 24-4-105.

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

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

15 **24-109-108. Computation of time.** FOR THE PURPOSES OF THIS
16 ARTICLE 109, IN COMPUTING TIME FOR A PERIOD OF DAYS, THE FIRST
17 BUSINESS DAY IS EXCLUDED AND THE LAST BUSINESS DAY IS INCLUDED.

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

20 PART 2
21 APPEALS

22 **24-109-201. Appeal to the executive director - stay of**
23 **procurements.** (1) Unless an action has been initiated previously in the
24 district court of the city and county of Denver pursuant to this ~~article~~
25 ARTICLE 109, the executive director shall have the authority to review and
26 determine ~~de novo~~ any appeal by an aggrieved ~~person~~ PARTY from a
27 decision of the ~~head of a purchasing agency~~ PROCUREMENT OFFICIAL or

1 a HIS OR HER designee rendered pursuant to section 24-109-107. The
2 executive director is authorized to designate another person to exercise
3 his or her powers pursuant to this part 2. THE EXECUTIVE DIRECTOR OR HIS
4 OR HER DESIGNEE MAY REFER AN APPEAL TO THE OFFICE OF
5 ADMINISTRATIVE COURTS TO REVIEW AND DETERMINE ANY APPEAL
6 PURSUANT TO SECTION 24-30-1001. IF THE AGGRIEVED PARTY FILES AN
7 ACTION WITH THE DISTRICT COURT OF THE CITY AND COUNTY OF DENVER
8 PURSUANT TO SECTION 24-109-205 AT ANY TIME DURING THE REVIEW BY
9 THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE, THE AUTHORITY OF
10 THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE IS
11 TERMINATED.

12 (2) A CONTRACT FOR A TOTAL VALUE OF ONE MILLION FIVE
13 HUNDRED THOUSAND DOLLARS OR MORE RESULTING FROM A REQUEST FOR
14 PROPOSALS IS NOT AWARDED UNTIL ANY APPEAL MADE IN CONNECTION
15 WITH THE REQUEST FOR PROPOSALS HAS BEEN RESOLVED PURSUANT TO
16 THIS PART 2; EXCEPT THAT THE EXECUTIVE DIRECTOR OR THE EXECUTIVE
17 DIRECTOR'S DESIGNEE MAY OVERRIDE THE STAY IF HE OR SHE DETERMINES
18 THAT SUCH OVERRIDE IS IN THE BEST INTEREST OF THE STATE.

19 **24-109-202. Rules of procedure.** (1) The executive director shall
20 adopt rules of procedure which, to the fullest extent possible, provide for
21 the expeditious resolution of appeals of controversies. The only parties to
22 the appeals shall be the ~~persons aggrieved by decisions of the head of a~~
23 ~~purchasing agency or a designee~~ AGGRIEVED PARTIES and the appropriate
24 ~~state agency~~ GOVERNMENTAL BODY. Section 24-4-105 shall not apply to
25 reviews and determinations made by the executive director or his or her
26 designee pursuant to this ~~article~~ ARTICLE 109.

27 (2) AN APPEAL IS LIMITED TO ONLY THE MATERIAL ISSUES RAISED

1 IN THE ORIGINAL PROTEST; EXCEPT THAT THE APPEAL MAY INCLUDE NEW
2 EVIDENCE OR ADDITIONAL INFORMATION RELATED TO THOSE MATERIAL
3 ISSUES OR MATERIAL ISSUES RELATED TO THE CONDUCT OF THE PROTEST.

4 [REDACTED]

5 **24-109-203. Time limitation for appeals.** (1) In the case of an
6 appeal to the executive director from a decision regarding a protested
7 solicitation or award, the aggrieved ~~person~~ PARTY shall file an appeal
8 within ten ~~working~~ BUSINESS days of the date that a decision is mailed OR
9 OTHERWISE FURNISHED TO THE AGGRIEVED PARTY pursuant to section
10 24-109-107 (2).

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

16 **24-109-204. Decisions of the executive director.** (1) On each
17 appeal submitted, the executive director or ~~the executive director's~~ HIS OR
18 HER designee shall promptly decide the contract controversy, debarment,
19 or suspension or whether the solicitation or award was in accordance with
20 the procedures provided in this code, regulations enacted pursuant to this
21 code, and the terms and conditions of the solicitation. The decision shall
22 be in writing. A copy of any decision shall be provided to ~~all parties~~ THE
23 AGGRIEVED PARTY AND THE PROCUREMENT OFFICIAL OF THE USING
24 AGENCY.

25 (2) ~~A written decision pursuant to subsection (1) of this section~~
26 ~~shall be issued within the following time periods:~~

27 (a) In the case of any protest concerning the solicitation or award

1 of a contract or of debarment or suspension from consideration for award
2 of contract OR CONTRACT CONTROVERSY, A WRITTEN DECISION SHALL BE
3 ISSUED within thirty ~~working~~ BUSINESS days after receipt of the appeal.
4 and

5 (b) ~~In the case of any controversy arising between the state and a~~
6 ~~contractor by virtue of a contract between them, within forty-five days~~
7 ~~after receipt of the appeal.~~

8 (3) IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE
9 DETERMINES THAT THE SOLICITATION OR AWARD WAS NOT IN
10 ACCORDANCE WITH THIS CODE, REMEDIES AWARDED IN THE DECISION, IF
11 ANY, SHALL BE LIMITED TO THOSE SET FORTH IN PART 5 OF THIS ARTICLE
12 109.

13 **24-109-205. Appeals to district court.** An appeal of a decision
14 ~~by~~ OF the executive director or a HIS OR HER designee rendered pursuant
15 to section 24-109-201 or by the ~~head of a purchasing agency~~
16 PROCUREMENT OFFICIAL or a HIS OR HER designee rendered pursuant to
17 section 24-109-107 shall be filed with the district court for the city and
18 county of Denver, which shall have exclusive jurisdiction to hear such
19 appeals. ~~Any judicial action under this part 2 shall be de novo, and~~ The
20 provisions of section 24-4-106 shall not apply TO ANY APPEAL TO THE
21 DISTRICT COURT UNDER THIS PART 2.

22 **24-109-206. Time limitations on appeals to the district court.**

23 (1) A judicial review of a decision of the executive director or a HIS OR
24 HER designee or of the ~~head of a purchasing agency~~ PROCUREMENT
25 OFFICIAL or a HIS OR HER designee shall be initiated within the following
26 time periods:

27 (a) In the case of an action between the state and a ~~bidder, offeror,~~

1 ~~or contractor, prospective or actual, who is~~ AN aggrieved PARTY
2 AGGRIEVED in connection with the solicitation or award of a contract,
3 within ten ~~working~~ BUSINESS days after ~~receipt~~ of the decision IS
4 RENDERED;

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

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

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

12 **24-109-301. Interest.** EXCEPT FOR INTEREST PAYABLE ON
13 LIABILITY INCURRED BY THE STATE UNDER SECTION 24-30-202 (24),
14 interest on amounts determined to be due to a contractor or to the state
15 UNDER THIS CODE shall ~~be payable~~ ACCRUE from the date the ~~payment~~
16 ~~was due in accordance with the terms of the contract or the claim was~~
17 ~~filed, whichever is earlier, through the date of decision or judgment,~~
18 ~~whichever is later~~ CONTROVERSY WAS SUBMITTED PURSUANT TO SECTION
19 24-109-106 THROUGH THE FINAL RESOLUTION OF THE CONTROVERSY BY
20 THE PROCUREMENT OFFICIAL OR UPON FINAL DETERMINATION OF THE
21 EXECUTIVE DIRECTOR OR ADJUDICATION OF THE DENVER DISTRICT COURT,
22 WHICHEVER OCCURS LAST. Interest shall be calculated ~~at eleven percent~~
23 ~~per annum~~ AT THE AMOUNT DUE AT THE RATE SET FORTH IN THE
24 CONTRACT OR AT THE RATE OF ONE PERCENT PER MONTH, WHICHEVER IS
25 GREATER, UNTIL THE AMOUNT IS PAID IN FULL.

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

1 BE CANCELED OR REVISED TO COMPLY WITH THIS CODE, AT THE DIRECTION
2 OF THE PROCUREMENT OFFICIAL. THE DETERMINATION OF THE
3 PROCUREMENT OFFICIAL UNDER THIS SECTION SHALL NOT BE SUBJECT TO
4 FURTHER ADMINISTRATIVE OR JUDICIAL REVIEW.

5 **24-109-503. Protest - remedies following an award -**
6 **ratification by chief procurement officer.** IF THE PROCUREMENT
7 OFFICIAL DETERMINES THAT THE SOLICITATION OR AWARD IS IN VIOLATION
8 OF THIS CODE, THE PROCUREMENT OFFICIAL MAY CANCEL OR TERMINATE
9 SUCH SOLICITATION OR AWARD, DIRECT THE GOVERNMENTAL BODY TO
10 MODIFY SUCH SOLICITATION OR AWARD TO ELIMINATE THE VIOLATIONS,
11 OR IF THE PROCUREMENT OFFICIAL DETERMINES THAT THE SOLICITATION
12 OR AWARD IS IN THE BEST INTERESTS OF THE STATE, THE PROCUREMENT
13 OFFICIAL MAY SUBMIT THE RECOMMENDATION TO RATIFY THE
14 SOLICITATION OR AWARD TO THE EXECUTIVE DIRECTOR OR THE CHIEF
15 PROCUREMENT OFFICER OR A DESIGNEE OF EITHER OFFICER. IF THE
16 EXECUTIVE DIRECTOR OR CHIEF PROCUREMENT OFFICER OR A DESIGNEE OF
17 EITHER OFFICER ELECTS TO RATIFY THE SOLICITATION OR AWARD, THE
18 AGGRIEVED PARTY WHO SHOULD HAVE BEEN AWARDED THE CONTRACT
19 UNDER THE SOLICITATION, BUT WAS NOT, SHALL BE ENTITLED TO COSTS AS
20 SET FORTH IN SECTION 24-109-505. THE ACCEPTANCE OF COSTS BY THE
21 AGGRIEVED PARTY CONSTITUTES A WAIVER OF THE RIGHT TO APPEAL THE
22 DETERMINATION OF THE EXECUTIVE DIRECTOR OR THE CHIEF
23 PROCUREMENT OFFICER OR A DESIGNEE OF EITHER OFFICER.

24 **24-109-504. Appeals - remedies following an award.** (1) IF THE
25 EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE DETERMINES THAT THE
26 SOLICITATION OR AWARD IS IN VIOLATION OF THIS CODE IN ANY MATERIAL
27 RESPECT, THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE MAY CANCEL

1 OR TERMINATE SUCH SOLICITATION OR AWARD, DIRECT THE PURCHASING
2 AGENCY TO MODIFY SUCH SOLICITATION OR AWARD TO ELIMINATE ANY
3 VIOLATIONS, OR IF THE PROCUREMENT OFFICIAL DETERMINES THAT THE
4 SOLICITATION OR AWARD IS IN THE BEST INTERESTS OF THE STATE, THE
5 PROCUREMENT OFFICIAL MAY SUBMIT THE RECOMMENDATION TO RATIFY
6 THE SOLICITATION OR AWARD TO THE EXECUTIVE DIRECTOR OR HIS OR HER
7 DESIGNEE. IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE ELECTS
8 TO RATIFY THE SOLICITATION OR AWARD, THE AGGRIEVED PARTY WHO
9 SHOULD HAVE BEEN AWARDED THE CONTRACT UNDER THE SOLICITATION,
10 BUT WAS NOT, SHALL BE ENTITLED TO COSTS AS SET FORTH IN SECTION
11 24-109-505.

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

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

1 SECTION 24-109-505.

2 **24-109-505. Costs.** WHEN A PROTEST IS SUSTAINED BY THE
3 PROCUREMENT OFFICIAL OR UPON ADMINISTRATIVE OR JUDICIAL REVIEW
4 AND THE AGGRIEVED PARTY SHOULD HAVE BEEN, BUT WAS NOT, AWARDED
5 THE CONTRACT UNDER THE SOLICITATION, THE AGGRIEVED PARTY SHALL
6 BE ENTITLED TO ONLY THE REASONABLE COSTS INCURRED IN CONNECTION
7 WITH THE SOLICITATION, INCLUDING BID PREPARATION COSTS.
8 REASONABLE COSTS SHALL NOT INCLUDE ATTORNEY FEES. NO OTHER
9 COSTS SHALL BE PERMITTED. THESE COSTS SHALL BE PAID FROM FUNDS
10 APPROPRIATED OR OTHERWISE MADE AVAILABLE TO THE USING AGENCY
11 THAT IS DETERMINED TO BE RESPONSIBLE FOR THE VIOLATION OF THE
12 CODE. SUCH DETERMINATION SHALL BE MADE BY THE PROCUREMENT
13 OFFICIAL IN CONNECTION WITH A PROTEST AND BY THE EXECUTIVE
14 DIRECTOR IN CONNECTION WITH AN APPEAL.

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

17 **24-110-201. Cooperative purchasing authorized.** (1) IN
18 ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE 110 AND RULES
19 PROMULGATED BY THE EXECUTIVE DIRECTOR, any public procurement unit
20 may either participate in, sponsor, conduct, or administer a cooperative
21 purchasing agreement for the procurement of any supplies, services, or
22 construction with one or more public procurement units, external
23 procurement ~~activities~~ UNITS, or procurement consortiums that include as
24 members tax-exempt organizations as defined by section 501 (c)(3) of the
25 federal "Internal Revenue Code of 1986", as amended, in accordance with
26 an agreement entered into between the participants. Such cooperative
27 purchasing may include, but is not limited to, joint or multiparty contracts

1 between public procurement units and open-ended state public
2 procurement unit contracts that are made available to local public
3 procurement units.

4 (1.5) WITH PRIOR WRITTEN APPROVAL OF THE CHIEF
5 PROCUREMENT OFFICER AND UNDER PROCEDURES ESTABLISHED BY RULE,
6 A STATE PUBLIC PROCUREMENT UNIT MAY SPONSOR, CONDUCT, OR
7 ADMINISTER A COOPERATIVE PURCHASING AGREEMENT WITH ONE OR MORE
8 PUBLIC PROCUREMENT UNITS, EXTERNAL PROCUREMENT UNITS, OR
9 PROCUREMENT CONSORTIUMS.

10 (2) With prior written approval of the ~~executive director~~ CHIEF
11 PROCUREMENT OFFICER and under procedures established by rule, a state
12 public procurement unit may purchase goods or services under the terms
13 of a contract between a vendor and an external procurement ~~activity~~ UNIT
14 or a local public procurement unit without complying with the
15 requirements of section 24-102-202.5 and article 103 of this ~~title~~ TITLE
16 24.

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

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

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

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

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

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

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

12 **24-110-202. Sale, acquisition, or use of supplies by a public**
13 **procurement unit.** Any public procurement unit may sell to, acquire
14 from, or use any supplies belonging to another public procurement unit
15 or external procurement ~~activity~~ UNIT independent of the requirements of
16 article 103 of this ~~title~~ TITLE 24.

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

19 **24-110-203. Cooperative use of supplies or services.** Any public
20 procurement unit may enter into an agreement, independent of the
21 requirements of article 103 of this ~~title~~ TITLE 24, with any other public
22 procurement unit or external procurement ~~activity~~ UNIT for the
23 cooperative use of supplies or services under the terms agreed upon
24 between the parties.

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

27 **24-110-204. Joint use of facilities.** Any public procurement unit

1 may enter into agreements for the common use or lease of warehousing
2 facilities, capital equipment, and other facilities with another public
3 procurement unit or an external procurement ~~activity~~ UNIT under the
4 terms agreed upon between the parties.

5 **SECTION 56.** In Colorado Revised Statutes, 24-110-205, **amend**
6 (1), (2), (3) introductory portion, and (4) introductory portion as follows:

7 **24-110-205. Supply of personnel, information, and technical**
8 **services.** (1) Any public procurement unit is authorized, in its discretion,
9 upon written request from another public procurement unit or external
10 procurement ~~activity~~ UNIT, to provide personnel to the requesting public
11 procurement unit or external procurement ~~activity~~ UNIT.

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

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

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

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

3 **24-110-206. Use of payments received by a supplying public**
4 **procurement unit.** All payments from any public procurement unit or
5 external procurement ~~activity which~~ UNIT THAT are received by a public
6 procurement unit for supplying personnel or services shall be available
7 for use as authorized by law or pursuant to fiscal rules.

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

10 **24-110-207. Public procurement units - compliance with code.**
11 Whenever the public procurement unit or external procurement ~~activity~~
12 ~~which~~ UNIT THAT is administering a cooperative ~~purchase~~ PURCHASING
13 agreement complies with the requirements of this code, the public
14 procurement unit ~~which~~ THAT is participating in such agreement shall also
15 be deemed to have complied with this code. No public procurement unit
16 may enter into a cooperative purchasing agreement for the purpose of
17 circumventing this code.

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

20 **24-110-207.5. Certification of certain entities as local public**
21 **procurement units - rules - report.** (2) The executive director ~~shall~~
22 MAY adopt such rules as are necessary to implement the certification
23 process required by this section.

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

26 **8-17-101. Colorado labor employed on public works.** (2) As
27 used in this ~~article~~ ARTICLE 17:

1 (b) "Public works project" ~~shall have~~ HAS the same meaning as
2 "public project" as defined in ~~section 8-19-102 (2)~~ SECTION 24-103-908
3 (1).

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

6 **17-24-106.6. Surplus state property.** (2) The director shall
7 promulgate rules to be utilized by the division in governing:

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

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

13 **17-24-111. Purchasing requirement.** (1) (a) The director is
14 hereby authorized to develop programs that produce goods and services,
15 including capital construction items, which are used by agencies financed
16 in whole or in part by the state, any political subdivision thereof, or the
17 federal government and to develop programs that produce goods,
18 including capital construction items, which are used by public entities
19 involved in lease-purchase agreements as provided in section 17-24-106
20 (1)(f)(II). The director shall also develop programs to market goods and
21 services to distributor networks, nonprofit organizations, private sector
22 retailers, and the general public. The state and its institutions, agencies,
23 and departments may purchase through the department of personnel or
24 purchasing agency authorized by section 24-102-302 (2), ~~C.R.S.~~, such
25 goods and services as are produced by the division, unless similar goods
26 and services can be obtained at or below the amount established for small
27 purchases which are exempt from the ~~competitive sealed bidding~~

1 INVITATION FOR BIDS requirements of the "Procurement Code" contained
2 in part 2 of article 103 of title 24. ~~C.R.S.~~ Goods and services produced by
3 the division shall be provided at a price comparable to the current market
4 price for similar goods and services. State agencies may purchase goods
5 and services from sources other than the division; except that office
6 furniture and office systems shall be purchased from the division. Printing
7 services shall be purchased from the division unless a state agency
8 operates its own printing operation. If the division is not able to provide
9 its goods or services at a price or level of quality which is comparable to
10 that provided by the private sector or provide them in a timely manner,
11 which price, level of quality, or timeliness is determined by the
12 department of personnel, the department of personnel shall make a
13 certification to that effect, and the state agency purchasing such goods or
14 services shall not be required to purchase them from the division.

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

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

1 follows:

2 **23-5-132. Governing boards - travel policies - exemption from**
3 **state travel rules.** Each governing board shall adopt travel policies for
4 the institutions of higher education under its control, including but not
5 limited to the use of travel services or travel agencies by the employees
6 of the governing board or said institutions. Any rules adopted by the state
7 controller pursuant to section 24-30-202 (26), ~~C.R.S.~~, or by the executive
8 director of the department of personnel pursuant to ~~section 24-102-401,~~
9 ~~C.R.S.~~ SECTION 24-102-202, that impose restrictions or requirements
10 pertaining to the use of travel services or travel agencies shall not apply
11 to a governing board or state institution of higher education.

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

14 **24-30-202. Procedures - vouchers, warrants, and checks -**
15 **rules - penalties - definitions.** (24) (b) As used in ~~paragraph (a) of this~~
16 ~~subsection (24)~~ SUBSECTION (24)(a) OF THIS SECTION, "liability incurred
17 on behalf of the state" means the receipt of supplies, as defined in ~~section~~
18 ~~24-101-301 (22)~~ SECTION 24-101-301 (47), or services, as defined in
19 ~~section 24-101-301 (20)~~ SECTION 24-101-301 (42), and receipt of a
20 correct notice of the amount due, by the state agency procuring such
21 supplies or services from a nongovernmental entity. No liability is
22 incurred on behalf of the state if a good faith dispute exists as to the
23 state's obligation to pay all or a portion of the account. Nothing in this
24 subsection (24) shall be construed to affect any provision for the time of
25 payment in a written contract between a state agency procuring services
26 or supplies and a nongovernmental entity.

27 **SECTION 65.** In Colorado Revised Statutes, 24-30-1505, **amend**

1 (2) as follows:

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

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

14 **24-37-403. Establishment of state pay for success contracts**
15 **program - pay for success contracts fund - creation.** (3) The office, or
16 the office and one or more local governments as authorized by subsection
17 (4) of this section, may enter into a contract with a lead contractor for the
18 provision of program-eligible interventions. Entry into such a contract is
19 generally subject to the requirements of the "Procurement Code", articles
20 101 to 112 of this ~~title~~ TITLE 24, and the office is encouraged, but not
21 required, to use the ~~competitive sealed~~ REQUEST FOR proposals process
22 specified in section 24-103-203. When developing and reviewing the
23 terms of a pay for success contract, the office may consult with the state
24 treasurer on financial terms and with experts to provide advice regarding
25 definition of appropriate performance targets. A contract shall not require
26 or authorize the state to use federal moneys to make success payments
27 unless federal law or federal regulations authorize the use of federal

1 moneys for that purpose. Before it enters into a contract, the office shall
2 make the contract available to the public on the office's website and
3 provide an opportunity for public comment regarding the contract. Prior
4 to entering into the terms of a contract, a contract must:

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

7 **24-91-103.6. Public entity - contracts - appropriations -**
8 **contract modifications - severability - definition.** (2) Every public
9 works contract, as defined in section 24-91-103.5 (1)(b), shall contain the
10 following:

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

22 (c) For any form of ~~order~~ MODIFICATION or directive by the public
23 entity requiring additional compensable work to be performed, a clause
24 that requires the public entity to reimburse the contractor for the
25 contractor's costs on a periodic basis, as those terms are defined in the
26 contract, for all additional directed work performed until a ~~change order~~
27 CONTRACT MODIFICATION is finalized. In no instance shall the periodic

1 reimbursement be required before the contractor has submitted an
2 estimate of cost to the public entity for the additional compensable work
3 to be performed. Notwithstanding the provisions of this ~~paragraph (c)~~
4 SUBSECTION (2)(c), state public works contracts shall be subject to the
5 provisions of section 24-30-202.

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

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

27 **24-92-103. Construction of public projects - invitation for**

1 **bids.** (1) All construction contracts for public projects that do not receive
2 federal moneys may be awarded by ~~competitive sealed bidding~~ SOLICITED
3 BY INVITATION FOR BIDS pursuant to this section.

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

6 **24-92-103.5. Construction of public projects - invitation for**
7 **best value bids.** (5) ~~A request for competitive sealed best value bids~~ AN
8 INVITATION FOR BEST VALUE BIDS issued pursuant to this section must
9 otherwise comply with the requirements of section 24-103-203
10 concerning ~~competitive sealed~~ REQUESTS FOR proposals for
11 nonconstruction contracts to the extent that such requirements do not
12 conflict with this section. In the case of a conflict, the provisions of this
13 section supersede.

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

16 **24-92-103.7. Disclosure - invitation for bids - invitation for**
17 **best value bids.** The executive director of an agency of government or
18 president of an institution of higher education that enters into a
19 construction contract for a public project pursuant to this ~~article~~ ARTICLE
20 92 that is not funded in any part with federal moneys shall disclose to the
21 public the agency of government's rationale or the institution's rationale
22 for selecting the ~~competitive sealed bidding~~ INVITATION FOR BIDS process
23 pursuant to section 24-92-103 or the ~~competitive sealed best value~~
24 ~~bidding~~ INVITATION FOR BEST VALUE BIDS process pursuant to section
25 24-92-103.5 for the public project. The agency or institution shall post the
26 disclosure on its website.

27 **SECTION 71.** In Colorado Revised Statutes, **amend** 24-92-110

1 as follows:

2 **24-92-110. Rules and regulations.** The executive director of the
3 department of personnel shall promulgate rules and regulations which are
4 designed to implement the provisions of this ~~article~~ ARTICLE 92; except
5 that the executive director of the department of transportation shall
6 promulgate rules and regulations relating to bridge and highway
7 construction bidding practices including, notwithstanding any other
8 provisions of this ~~article~~ ARTICLE 92, rules governing debarment of
9 contractors. The rules must include provisions requiring agencies of
10 government to keep certain public project records, even if duplicative, in
11 accordance with generally accepted cost accounting principles and
12 standards. In addition, the rules must include criteria to be used by a
13 responsible ~~officer~~ PROCUREMENT OFFICIAL in evaluating a ~~competitive~~
14 ~~sealed~~ RESPONSE TO AN INVITATION FOR best value ~~bid~~ BIDS pursuant to
15 section 24-92-103.5 (3).

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

18 **30-20-1406. Waste tire market development fund - creation -**
19 **incentive programs - legislative declaration - repeal.** (2) The
20 department shall use the fund:

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

26 **SECTION 73.** In Colorado Revised Statutes, 43-1-113, **amend**
27 (16)(a) as follows:

1 **43-1-113. Funds - budgets - fiscal year - reports and**
2 **publications - repeal.** (16) (a) If there are fewer than three bidders on a
3 design bid build highway project, no award shall be made if the award is
4 more than ten percent over the estimate of the department of
5 transportation on the project; except that, if the estimate of the department
6 on the project is less than one million dollars and there are fewer than
7 three bidders, the executive director may make an award of more than ten
8 percent, but less than twenty-five percent, over the estimate of the
9 department to the low responsible bidder, as defined in ~~section~~
10 ~~24-103-101 (3), C.R.S.~~ SECTION 24-101-301 (24).

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

13 **43-1-1202. Department powers.** (1) Notwithstanding any other
14 law, the department may:

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

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

19 **43-1-1406. General procedures.** (2) Except as provided in this
20 subsection (2), the department shall allow the preference to Colorado
21 residents provided in ~~section 8-19-101, C.R.S.~~, SECTION 24-103-908 in
22 awarding an adjusted score design-build contract pursuant to this part 14.
23 In evaluating and selecting a proposal for a design-build contract under
24 this part 14, the department shall assign greater value to a proposal in
25 proportion to the extent such proposal commits to using Colorado
26 residents to perform work on the transportation project. If, however, the
27 department determines that compliance with this subsection (2) may

1 cause the denial of federal moneys that would otherwise be available for
2 the transportation project or if such compliance would otherwise be
3 inconsistent with the requirements of federal law, the department shall
4 suspend the preference granted under this subsection (2) only to the
5 extent necessary to prevent denial of federal moneys or to eliminate the
6 inconsistency with federal law.

7 **SECTION 76. Repeal of provisions being relocated in this act.**

8 In Colorado Revised Statutes, **repeal** 8-18-101, 8-18-103, 8-19-101,
9 8-19-102, 8-19-104, 8-19-105, 8-19.5-101, 24-101-103, 24-102-204,
10 24-102-205, 24-102-401, 24-103-101, 24-103-202.5, 24-103-207,
11 24-103-207.5, 24-103-209, 24-103-210, 24-103-211, 24-103-501,
12 24-103-503, 24-103-601, 24-103.5-101, 24-104-101, 24-107-101,
13 24-109-101, and 24-110-101 (1) to (5).

14 **SECTION 77.** In Colorado Revised Statutes, **repeal** 24-103-404,
15 24-103-502, 24-103-807, 24-105-102, 24-109-104, 24-109-401,
16 24-109-402, 24-109-403, and 24-111-103.

17 **SECTION 78. Act subject to petition - effective date.** This act
18 takes effect at 12:01 a.m. on the day following the expiration of the
19 ninety-day period after final adjournment of the general assembly (August
20 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
21 referendum petition is filed pursuant to section 1 (3) of article V of the
22 state constitution against this act or an item, section, or part of this act
23 within such period, then the act, item, section, or part will not take effect
24 unless approved by the people at the general election to be held in
25 November 2018 and, in such case, will take effect on the date of the
26 official declaration of the vote thereon by the governor.