

DEPARTMENT OF PERSONNEL AND ADMINISTRATION

Division of Finance and Procurement

PROCUREMENT RULES

1 CCR 101-9

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

ARTICLE 101 GENERAL PROVISIONS

PART 1 PURPOSES, CONSTRUCTION AND APPLICATION

R-24-101-101 General

These rules implement the provisions of the Colorado Procurement Code (section 24-101-101, et seq., C.R.S.) referred to in these rules as the “code”, the Construction Bidding for Public Projects Act (section 24-92-101, et seq., C.R.S.), Construction Contracts with Public Entities (section 24-91-101, et seq., C.R.S.) and the Integrated Delivery Method for Public Projects Act (section 24-93-101, et seq., C.R.S.).

R-24-101-105 Applicability

These rules shall apply to all publicly funded contracts entered into by all governmental bodies of the executive branch of this state; except as otherwise specified in the code. The procurements are further clarified as follows:

- (a) For purposes of subparagraph (1)(a)(VIII) of section 24-101-105, C.R.S., “utilities” does not include telecommunications.
- (b) For purposes of subparagraph (1)(a)(X) of section 24-101-105, C.R.S., “subscriptions” does not include software.
- (c) For purposes of subparagraph (1)(a)(XII) of section 24-101-105, C.R.S., “client-based services” includes supplies when supplies are provided in connection with the services being provided by the governmental body to the client.
- (d) For purposes of subparagraph (1)(a)(XIII) of section 24-101-105, C.R.S., dues and memberships mean charges paid to an organization at regular intervals to belong or become a member of the organization. Any additional services offered by the organization are not included in this definition.

R-24-101-107-01 Ethics

All individuals who are involved in any aspect of the procurement process within the state of Colorado, regardless of whether they are employed by the state, shall not:

- (a) Engage in or give the appearance of unethical or compromising practice in relationships, actions, and communications related to the procurement process.
- (b) Solicit or accept money, loans, credits, or prejudicial discounts, and avoid the acceptance of gifts, entertainment, favors, or services from another party which might influence, or appear to influence a procurement decision.

- (c) Offer money, loans, credits, prejudicial discounts, gifts, entertainment, favors, or services with the intent to influence, or in such a manner that might influence, a procurement decision.
- (d) Make material misrepresentations in any communications related to a procurement process, including, but not limited to, information presented in proposals and bids.

Violation of this rule by an individual acting on behalf of the state may result in removal of the individual from the procurement process and imposition of any applicable remedies. Violation of this rule by a vendor or contractor may result in that vendor's or contractor's disqualification from award of any contract that was impacted by the violation, the imposition of contractual remedies under any contract, and/or remedies available in article 109 of the code.

R-24-101-107-02 Conflicts of Interest

All individuals who are involved in any aspect of the procurement process within the state of Colorado, regardless of whether they are employed by the state, shall avoid any actual or apparent, individual or organizational conflict of interest in accordance with department policies and all associated technical guidance.

PART 2 WRITTEN DETERMINATIONS

R-24-101-201-01 Preparation and Execution

Where the code or these rules require a written determination, the procurement official or his or her designee required to prepare the determination may delegate its preparation. The determination is subject to the approval of the procurement official or his or her designee.

R-24-101-201-02 Content

Each written determination shall set out sufficient facts, circumstances, and reasoning to substantiate the specific determination which is made.

R-24-101-201-03 Supporting Information

The procurement official or his or her designee responsible for the execution of a written determination may require other state personnel, including technical personnel and appropriate personnel in the using agency, to furnish, in an accurate and adequate fashion, any information pertinent to the determination.

PART 3 DEFINITIONS

R-24-101-301 Defined Terms

As used throughout these rules, words and terms defined in the code shall have the same meaning as in the code. In addition, for the purposes of these rules, the following terms shall have the meanings set forth below:

- (a) "Commodity", "goods" and "supplies" as used in these rules shall have the same meaning as "product".
- (b) "Electronic procurement systems" means database and notification systems created pursuant to section 24-102-202.5, C.R.S.
- (c) "Procurement agent" as used in these rules also may include a procurement official. The procurement official has the authority to perform as the procurement agent.

- (d) "Product" means anything that is produced or manufactured and that may be obtained, or needs to be obtained, by the state, either in and of itself, or in conjunction with services.
- (e) "Construction project," for purposes of rule R-24-102-202.5-02, means any procurement that meets the definition of a "public project," as defined in section 24-92-102(8), C.R.S., or any procurement that meets the definition of "construction" as defined in section 24-101-301, C.R.S.

PART 4 PROCUREMENT RECORDS AND INFORMATION

R-24-101-401-01 Prior to Award

Following the closing time and date for the submission of solicitation responses and prior to award of a contract, the names of the bidders or offerors shall be made available for inspection, upon request. For solicitations where the award is based on the lowest bid or where price is the primary consideration, the amount of each bid or proposal shall be included with the name of the bidder or offeror. For solicitations where the award is based on factors other than the lowest bid or where price is not the primary consideration, the amount of each bid or proposal shall not be made available prior to award. In no event shall a solicitation response be made available publicly prior to award.

R-24-101-401-02 After Award

After award of a solicitation, all documentation related to the solicitation, including bidder or offeror responses, shall be open to public inspection, except to the extent the state has approved a request from a bidder or offeror to classify certain portions of the response as trade secrets or other confidential or proprietary information.

R-24-101-401-03 Request for Confidentiality

A bidder or offeror may submit, as a part of its solicitation response, a written request for classification of certain portions of the response as trade secrets or other confidential or proprietary information. Material for which confidentiality has been requested shall be readily identifiable and separable from other portions of the solicitation to facilitate public inspection of the non-confidential portion of the solicitation response. In no event shall an entire solicitation response be classified as confidential. The procurement official or his or her designee shall determine if the information identified in the request is exempt from disclosure in accordance with section 24-72-204, C.R.S., and shall inform the bidder or offeror in writing of his or her determination. If the bidder or offeror does not agree with the determination of the procurement official or his or her designee, the bidder or offeror may protest the determination in accordance with article 109 of the code.

R-24-101-401-04 Non-Competitive Procurements

The rules applicable to the disclosure of information prior to and after an award and the process for determining if certain information is exempt from disclosure in accordance with section 24-72-204, C.R.S., also shall apply to non-competitive procurements.

R-24-101-401-05 Confidentiality regarding Cancellation of a Solicitation

The reason and documentation supporting the decision to cancel any solicitation, or rejection of bids or proposals, in whole or in part, before a contract is executed shall remain confidential in accordance with section 24-103-301, C.R.S., for the lesser of six months or until the contract at issue is awarded.

PART 5 PROCUREMENT CODE WORKING GROUP

ARTICLE 102 PROCUREMENT ORGANIZATION

PART 1 EXECUTIVE DIRECTOR, DEPARTMENT OF ADMINISTRATION

PART 2 PURCHASING

R-24-102-201 Chief Procurement Officer

The chief procurement officer shall be appointed by the executive director and shall have these powers and duties through delegation from the executive director. Any powers and duties not so delegated remain with the executive director. The executive director and the chief procurement officer have the authority to perform the role of procurement official as needed.

R-24-102-202-01 Mandatory and Permissive Price Agreements

- (a) "Price agreement" means a contract negotiated, managed and maintained by the department for commonly sourced supplies and services. These contracts may be used by all governmental bodies, institutions, local governments and nonprofits certified pursuant to section 24-110-207.5, C.R.S.
- (b) The chief procurement officer may issue mandatory or permissive price agreements for supplies or services.
- (c) Mandatory price agreements shall be used by all governmental bodies if and when the supplies or services are needed. Any governmental body desiring to purchase supplies or services of a similar nature from a source other than a mandatory price agreement must request and receive written authorization to do so from the chief procurement officer or his or her designee.
- (d) Permissive price agreements may be used by all governmental bodies if the supplies or services are needed.
- (e) If a governmental body does not use mandatory or permissive price agreements to obtain the covered supplies or services, the needs must be submitted for competition as provided by these rules.

R-24-102-202-02 Purchasing Delegations

Recognizing the importance of local control to meet local needs, delegation of purchasing authority is encouraged where efficient. Purchasing delegations will have limits as described in rule R-24-103-201-01, and all associated subsections. A governmental body that receives limited purchasing authority from the executive director or chief procurement officer shall be referred to as a "group I purchasing agency", and a governmental body that receives a full purchasing delegation shall be referred to as a "group II purchasing agency". The procurement official may further delegate his or her responsibilities in accordance with the policies of the department.

- (a) Minimum criteria to receive a group I purchasing delegation shall include:
 - (i) a signed delegation agreement between the executive director or chief procurement officer and the procurement official of the governmental body;
 - (ii) successful completion by staff of training as requested by the department; and
 - (iii) use of an electronic procurement system.

- (b) Minimum criteria to receive a group II purchasing delegation shall include:
 - (i) a signed delegation agreement between the executive director or chief procurement officer and the procurement official of the governmental body;
 - (ii) demonstrated need;
 - (iii) demonstrated existing staff competency in state purchasing; and
 - (iv) use of an electronic procurement system.

R-24-102-202-03 Revocation of Purchasing Delegation

If abuses to these rules by a governmental body are discovered, the chief procurement officer may revoke the purchasing authority in its entirety or modify the delegation to prevent future violations.

R-24-102-202.5-01 Use of Electronic Procurement Systems - Goods and Services

An electronic procurement system shall be the notification method for competitive solicitations for goods and services.

R-24-102-202.5-02 Use of Electronic Procurement Systems - Notice of Construction Projects and Professional Services

For all construction projects and for all procurements for professional services (as defined in section 24-30-1402(6), C.R.S.) for which competitive notification or solicitation procedures are required, a notification of the solicitation must be placed on an electronic procurement system, and the award must be posted on the same electronic procurement system.

R-24-102-206-01 Department – Services Contracts

The department will collect the data required by section 24-102-206, C.R.S. for all services contracts, including contracts for construction services.

R-24-102-206-02 Written Notice and Post of Notice Timeline

Pursuant to section 24-102-206(3), C.R.S., a governmental body shall provide written notice to the department within 30 calendar days of the receipt by the governmental body of a vendor's notice that the vendor or the vendor's subcontractor will perform services outside of the United States or the state. Pursuant to section 24-102-206(5), C.R.S., the department will post on the department's official web site, for a period of six months, any written notice that a vendor provides to a governmental body within 30 calendar days of the department's receipt of such notice.

PART 3 ORGANIZATION OF PUBLIC PROCUREMENT

PART 4 STATE PROCUREMENT RULES

PART 5 COORDINATION

ARTICLE 103 SOURCE SELECTION AND CONTRACT FORMATION

PART 1 DEFINITIONS

PART 2 METHODS OF SOURCE SELECTION

R-24-103-201 General Rules of Source Selection

The following general rules apply to all methods of source selection, unless otherwise specified. For methods of source selection for construction, see rules implementing article 105 of the code.

R-24-103-201-01 Purchasing Thresholds

- (a) Purchases of goods or services may be made without benefit of competition as follows:
 - (i) A governmental body without delegated purchasing authority may purchase goods or services up to a limit of \$5,000;
 - (ii) A governmental body with delegated purchasing authority may purchase goods or services up to \$25,000; and
- (b) Small purchases are goods and services purchases costing less than \$150,000. Goods and services between \$25,000 and \$150,000 may be purchased using a documented quote process, described in rule R-24-103-204-01, or the methods identified in section 24-103-201, C.R.S. The chief procurement officer may approve or deny a request from a procurement official or his or her designee to allow the purchasing agency to use a documented quote process when the estimated cost would exceed the small purchase threshold.
- (c) Invitation for bids, described in rule R-24-103-202-01, request for proposals, described in rule R-24-103-203, and invitations to negotiate, described in rule R-24-103-208-03, may be used for goods or services estimated to exceed the small purchase threshold of \$150,000.
- (d) Reverse auctions, described in rule R-24-103-208-01; special circumstance procurements, described in rule R-24-103-208-04; emergency procurements, described in rule R-24-103-206 and rule R-24-105-101.6; and sole source procurements, described in rule R-24-103-205 and rule R-24-105-101.5, may be used at any dollar threshold.

R-24-103-201-02 Fair and Reasonable Price

- (a) Small purchases are subject to the requirement that prices paid be fair and reasonable in accordance with section 24-30-202(2), C.R.S.
- (b) The individual conducting the acquisition on behalf of the state, to include the procurement official or his or her designee as required by these rules, shall use professional judgment to ensure that the state is receiving maximum value. This rule does not preclude the option to place the solicitation on an electronic procurement system.
- (c) Procurement of services greater than \$25,000 must be reviewed by the procurement official or his or her designee to determine if prices or rates are fair and reasonable.

- (d) If only one bid or proposal is received in response to a solicitation, an award may be made to the single bidder or offeror if the procurement official finds that the price submitted is fair and reasonable and that other prospective bidders or offerors had reasonable opportunity to respond. If the price submitted is not fair and reasonable and there is not adequate time for re-solicitation, the procurement official may enter into competitive negotiation in accordance with rule R-24-103-208-02. If responsiveness is a requirement for award, the bid or proposal of the sole prospective bidder or offeror must be responsive before being considered for award. Otherwise, the bid must be rejected.

R-24-103-201-03 Terminology

- (a) An “acceptable bid or proposal” means a bid or proposal submitted by any person in response to a solicitation, issued by the state, which is in compliance with the solicitation terms and conditions, and within the requirements of the plans and specifications described and required therein.
- (b) “Advantageous” means a judgmental assessment by a governmental body of what is in the best interests of the governmental body.
- (c) A “bid or proposal” means a vendor’s response, to a solicitation, also called a response or offer.
- (d) A “substitute bid” means an offer submitted by any person in response to a solicitation that is not in substantial compliance with the terms and conditions and specifications of the solicitation as issued. A substitute bid is non-responsive to the requirements of the solicitation. If a substitute bid demonstrates that a different specification could be used to provide the desired or similar product or service, the procurement agent will be responsible for determining whether the alternative specification creates a justification for canceling the solicitation and re-soliciting.

R-24-103-201-04 Content of Solicitations

- (a) At a minimum, a solicitation shall include the following:
 - (i) instructions and information to vendors concerning the bid submission requirements, including the time and closing date for submission of bids or proposals, the address of the office to which bids or proposals are to be delivered, and any other special information; and
 - (ii) specifications or requirements which are not unduly restrictive. Brand name specifications, brand name or equal specifications, or qualified products lists shall only be used in accordance with the provisions of rules implementing article 104 of the code.
- (b) The solicitation may incorporate documents by reference provided that the solicitation specifies where such documents can be obtained.
- (c) Solicitations shall be conducted only by a procurement official or his or her designee.

R-24-103-201-05 Solicitation Publication Time

Except as provided under emergency procedures, described in rule R-24-103-206 and the rules implementing article 105 of the code, solicitations shall be published on an electronic procurement system as follows:

- (a) Documented quotes, as described in rule R-24-103-204-01, shall be published for at least three consecutive business days.

- (b) Invitations for bids, described in rule R-24-103-202-02, shall be published for at least 10 consecutive business days.
- (c) Requests for proposals, described in rule R-24-103-203, and invitations to negotiate, described in rule R-24-103-208-03, shall be published for at least 30 consecutive calendar days.
- (d) The intent to conduct a competitive reverse auction, described in rule R-24-103-208-01, shall be published for at least 10 consecutive business days.
- (e) When special requirements or conditions exist, the procurement official may lengthen or shorten the posting time, but in no case shall the time period be shortened to reduce competition. If a solicitation, other than a documented quote, is posted on an electronic procurement system for less than the publication time required in this rule, the procurement official shall document the reason a reduced publication period was required in the procurement record.

R-24-103-201-06 Questions and Clarifications

- (a) In cases where a solicitation may require interpretation, or raises questions or concerns from potential bidders or offerors, all known potential bidders or offerors must be given an opportunity to ask questions and receive answers or clarifications.
- (b) This may be accomplished by the use of a pre-bid or pre-proposal conference, a formal inquiry period, or a combination of methods. The solicitation shall state the anticipated method(s) to be used, and shall list corresponding dates, times and locations for any such opportunities.
- (c) Pre-bid or pre-proposal conferences may be conducted to explain the procurement requirements. Nothing stated at the pre-bid or pre-proposal conference shall change the solicitation unless a change is made by written amendment, posted on an electronic procurement system. Pre-bid or pre-proposal conference attendance may be mandatory or optional, but must be stated as such in the solicitation.
- (d) If responses to inquiries, regardless of the method of receiving and answering them, result in any material changes to the scope of work or otherwise affect the manner or form of response, the procurement official or his or her designee must notify all known potential bidders or offerors of any such change through modification of the solicitation.

R-24-103-201-07 Amendments

- (a) Amendments to solicitations shall be identified as such and may require that the bidder or offeror acknowledge receipt of all amendments issued when submitted its bid or proposal.
- (b) Amendments shall reference the portions of the solicitation it amends.
- (c) Amendments shall be posted on an electronic procurement system with sufficient time to allow prospective bidders or offerors to consider them in preparing their bids or proposals. If the time set for bid or proposal opening will not permit such preparation, such time shall be increased in the amendment.

R-24-103-201-08 Mistakes in Bids or Proposals

- (a) When it appears from a review of the bid or proposal that a mistake has been made, the procurement agent should request that the bidder or offeror confirm the bid or proposal.

- (b) Minor informalities are matters of form rather than substance, which are evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders or offerors; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The procurement official or his or her designee may waive such informalities or allow the bidder or offeror to correct them depending on which option is in the best interest of the state.
- (c) If the mistakes are clearly evident on the face of the bid or proposal document, the bid or proposal may not be withdrawn solely for this reason. Instead, the bidder or offeror may correct the mistakes to reflect the intended bid or proposal. Examples of mistakes that may be clearly evident on the face of the bid or proposal document are typographical errors, errors in extending unit prices, mathematical errors and transposition errors.
- (d) If the mistakes are attributable to an error in judgment, the bid or proposal may not be corrected.
- (e) Any decision to permit or deny correction of a bid or proposal under this section shall be supported by a written determination prepared by the procurement official or his or her designee.

R-24-103-201-09 Withdrawal of Bids or Proposals

- (a) Any bid or proposal may be modified or withdrawn by written notice to the appropriate purchasing agency prior to the specified bid opening date and time.
- (b) The procurement official may allow a bid or proposal to be withdrawn from the appropriate purchasing agency after bid or proposal opening but prior to award provided:
 - (i) the bidder or offeror provides written notice including evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided or the mistake is clearly evident on the face of the bid or proposal; and
 - (ii) the procurement official determines that it is reasonable to allow the bid or proposal to be withdrawn.
- (c) A bid or proposal may not be withdrawn from the purchasing agency after award.
- (d) If a bid is withdrawn in accordance with this rule, any bid surety shall be returned to the bidder or offeror in a timely manner.

R-24-103-201-10 Timeliness of Bids or Proposals

Bids or proposals received after the bid or proposal submission time shall not be opened and shall be rejected as a late response. The following exceptions may be permitted by the procurement official:

- (a) If a bid or proposal is not delivered by the specified submission date and time, the bid or proposal may be accepted if it can be reasonably determined by the procurement official that:
 - (i) the postal service, a courier or delivery service outside of the control of the vendor was in possession of the bid or proposal at the specified submission date and time; and
 - (ii) the bid or proposal was originally scheduled for delivery by a courier or delivery service outside the control of the vendor to the purchasing agency by the specified submission date and time; and
 - (iii) the bid or proposal is received by the purchasing agency on the business day following the specified submission date.

- (b) A bid or proposal that is in the possession of a purchasing agency's internal distribution system at the specified opening date and time shall be deemed to be received by the purchasing agency by the specified date and time.
- (c) In the event of a labor unrest (strike, work slowdown, etc.) which may affect mail delivery, the executive director or his or her designee is authorized to develop and issue emergency procedures.
- (d) In those situations where the late bid or proposal was not in the control of the vendor at the time of the bid or proposal submission date and time, the procurement official shall not accept the late bid or proposal unless he or she further finds that extenuating circumstances justifying acceptance of the late bid or proposal exist and can be documented.
- (e) The responsibility for ensuring that the bid or proposal is received on time rests with the vendor, and the reasonably foreseeable problems inherent in the delivery of bids or proposals (e.g. slow messengers, slow mail service, weather, bad directions, mechanical failures, traffic, etc.) are not extraordinary circumstances permitting acceptance of late bids or proposals.

R-24-103-201-11 Bid or Proposal Submissions

- (a) Telephone bids from vendors will not be accepted, except for small purchases allowed in section 24-103-204, C.R.S., and emergency procurements under section 24-103-206, C.R.S., or when the procurement official makes a written determination that market conditions are of such nature that it is in the best interest of the state to solicit telephone bids.
- (b) Bids or proposals may be submitted electronically via an electronic procurement system when the terms of the solicitation permit electronic submission.
- (c) Bids or proposals may be submitted electronically via means other than an electronic procurement system only if the solicitation permits electronic submission and the method of submission is approved by the department.
- (d) Bids or proposal shall allow for a minimum of 180 calendar days for acceptance by the state, unless otherwise specified in the solicitation. The procurement agent may require that bidders or offerors extend the time for acceptance by the state, provided that no other change is permitted.
- (e) Bids or proposals that do not comply with rules R-24-103-201-01 through R-24-103-201-11 will be rejected.

R-24-103-201-12 Alternate Bids or Offers

- (a) An alternate bid or proposal means an offer or response submitted in response to a solicitation issued by the state that is in essential compliance with the solicitation terms and conditions but offers an alternate that does not significantly deviate from the required specifications contained in the solicitation. The procurement agent would be responsible for determining whether an alternate bid or proposal is acceptable.
- (b) A solicitation may prohibit multiple or alternate bids or proposals. When prohibited the multiple or alternate bids or proposals shall be rejected although a clearly identified base bid or proposal will be considered for award as though it were the only bid or proposal submitted by the bidder or offeror. A solicitation shall specify if multiple or alternate bids or proposals will be allowed and how they will be treated.

- (c) Any bid or proposal which is conditioned upon receiving an award under both the particular solicitation for which the bid or proposal is made and another state solicitation shall be deemed nonresponsive and unacceptable.

R-24-103-201-13 Opening and Recording of Bids and Proposals

- (a) Upon receipt, all bids and proposals shall be recorded to reflect the date and time they were received by the purchasing agency, but shall not be opened.
- (b) Bids and proposals shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the solicitation. A register of bids and proposals shall be prepared which shall include the name of each bidder or offeror that responded.
- (c) The procurement agent shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing in accordance with rules R-24-101-401-01 through R-24-101-401-05.
- (d) Documented quotes, described in rule R-24-103-204-01, do not require a public opening and may be opened upon receipt. However, a register of responses shall be prepared.

R-24-103-201-14 Discussions

When permitted by the solicitation type, discussions may be held with bidders or offerors for purposes of clarification.

- (a) Bids or proposals may be initially classified as:
 - (i) acceptable;
 - (ii) potentially acceptable, that is, reasonable susceptible of being made acceptable; or
 - (iii) unacceptable.
- (b) Bidders or offerors shall be accorded fair and equitable treatment. In conducting discussions, auction techniques (except for reverse auctions described in rule R-24-103-208-01) or disclosure of any information derived from responses submitted by competing bidders or offerors is prohibited.

R-24-103-201-15 Evaluation and Award

- (a) Each method of source selection shall have a process for evaluation of bids and proposals as determined by the procurement official or his or her designee. Specific requirements for evaluation, if any, are addressed in these rules.
- (b) An award indicates the state's selection of a bid(s) or proposal(s) to receive a contract. However, an award does not mean that a contract has been executed.
- (c) No property interest of any nature shall accrue until the awarded contract is approved in accordance with section 24-30-202(2), C.R.S.

R-24-103-201-16 Procurement Records

The purchasing agency administering the procurement shall maintain a record of the procurement in accordance with department policies and all associated technical guidance.

R-24-103-201.5-01 Market Research

In addition to requests for information, other sources of market research include, but are not limited to:

- (a) Other governmental bodies;
- (b) Industry data;
- (c) Purchasing networks;
- (d) Academic institutions;
- (e) Professional associations;
- (f) Organizations that gather and analyze research data about business trends; and
- (g) Internet and database searches.

R-24-103-201.5-02 Formal Market Research

Formal market research is based on a defined need and may be derived from multiple sources. The findings resulting from formal market research should be summarized in a manner that preserves the information and protects any confidential information. Formal market research is encouraged for complex procurements.

R-24-103-201.5-03 Information Technology Projects

Due to the complexity of information technology projects and the emerging technology industry, formal market research is required for major information technology projects pursuant to section 24-37-302(1)(a.5), C.R.S., to ensure that the state is including the most appropriate information technology requirements in its solicitations.

R-24-103-201.5-04 Valid Procurement Need

Solicitations should only be issued when there is a valid procurement need. Solicitations should not be issued to obtain estimates or to “test the water.” A governmental body should use market research as a means to gain information when the procurement need is being assessed.

R-24-103-202-01 Invitation for Bids

A contract may be awarded by an invitation for bids. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to invitations for bids.

R-24-103-202-02 Bid Evaluation and Award

- (a) Following determination of acceptability of goods or services, bids shall be evaluated to determine which bidder offers the lowest cost to the state in accordance with specifications.
- (b) Discussions with bidders are permitted only if there has been a mistake in bids in accordance with rule R-24-103-201-08.
- (c) In the event an evaluation based on value analysis or other cost formulas will be used, this information shall be set forth in the invitation for bids.

- (d) A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids unless such bidder is also the lowest bidder as determined by value analysis or life cycle cost formulas as permitted in section 24-103-202, C.R.S., and this rule.
- (e) The provisions of section 24-103-904, C.R.S., which require a preference for environmentally preferable products apply to the award of contracts under this rule.
- (f) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

R-24-103-202-03 Multi-Step Invitation for Bids

A contract may be awarded by a multi-step invitation for bids. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to multi-step invitations for bids.

- (a) A multi-step invitation for bids is a two-phase process consisting of a technical first phase of one or more steps in which bidders submit un-priced technical bids to be evaluated by the state. Those bidders whose technical bids are determined to be acceptable during the first phase will be eligible to participate in the pricing second phase. The price bids of eligible bidders will be opened and considered during the second phase.
- (b) The solicitation for a multi-step invitation for bids may require all bidders to submit both the technical bid and the price bid prior to the solicitation closing date. In the alternative, the solicitation may require all bidders to submit the technical bid prior to the solicitation pricing date. Only those bidders whose technical bids are determined to be acceptable will be asked to submit price bids.
- (c) The multi-step invitation for bids method may be used when it is not practical to prepare a definitive description of the items being purchased, which would be sufficient to permit an award based on price.

R-24-103-202.3 Invitation for Best Value Bids

A contract may be awarded by an invitation for best value bids. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to invitations for best value bids.

R-24-103-202.3-01 Definitions

For purposes of section 24-103-202.3, C.R.S., and rules R-24-103-202.3 through R-24-103-202.3-03, the following definitions apply.

- (a) "Base bid" means the minimum functional requirements set forth in the bid, as issued by the state.
- (b) "Enhancements" means components, services, or products that exceed the minimum functional requirements and would improve the quality of the products or services being procured by the state.
- (c) "Options" means choices of additional components, services, or products that would provide increased value to the state beyond the base bid.
- (d) "Alternatives" means a different product or service that meets or exceeds the functional requirements of the base bid.

- (e) "Best value" means the lowest overall cost to the state after taking into consideration costs, benefits, and savings.

R-24-103-202.3-02 Evaluation

- (a) Bids shall be evaluated against the minimum functional requirements in the base bid. All bids meeting these requirements shall be determined to be responsive.
- (b) The invitation for best value bids shall expressly allow for enhancements, options, and/or alternatives to include pricing. The invitation for best value bid shall set forth the criteria or formula to be used for evaluation. The criteria or formula for evaluation must include objective consideration of the costs and savings and/or benefits associated with the enhancements, options, or alternatives.

R-24-103-202.3-03 Award

Based on the evaluation of the cost of the base bid, the dollar value of enhancements, options, or alternatives, and the determination of which enhancements, options, or alternatives best meet the needs of the state, an award shall be made to the bidder whose bid meets the minimum functional requirements in the base bid and provides the best value to the state.

R-24-103-203 Request for Proposals

A contract may be awarded by a request for proposals. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to requests for proposals. A request for proposals is intended to solicit proposals from potential vendors to determine the best method for achieving a specific goal or solving a particular problem and identify responsive vendors. The state may determine which of the responsive proposals is most advantageous.

R-24-103-203-01 Content of Request for Proposals

The request for proposals must include, at a minimum, a statement of work or specifications that address the specific goals or problems that are the subject of the solicitation, proposed terms of the resulting contract, and evaluation factors.

R-24-103-203-02 Evaluation of Proposals

The request for proposals shall state all of the evaluation factors, including price. The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used. Factors not specified in the request for proposals shall not be considered. Vendors should submit their most favorable response as the initial response and not assume there will be an opportunity for discussions.

R-24-103-203-03 Proposal Discussion with Individual Offerors after Opening

- (a) After proposals have been opened, discussions may be held with responsible offerors whose proposals are determined to be reasonably susceptible to be selected for award to:
 - (i) promote understanding of the state's requirements and the offerors' proposals; and
 - (ii) facilitate a contract that will be most advantageous to the state taking into consideration price and the other evaluation factors set forth in the request for proposals.

- (b) Offerors shall be accorded fair and equitable treatment in discussion and revision of their proposals. The offeror may make adjustments in goods or services and in costs and/or prices. Any changes to the technical or pricing portions of the proposal, shall be confirmed in writing by the offeror(s).

R-24-103-203-04 Award

- (a) Awards shall be made to the responsible offeror whose proposal is determined to be most advantageous to the state based on the evaluation factors set forth in the request for proposals.
- (b) The evaluation committee established to evaluate offers shall make such determination and make a recommendation to the procurement official or his or her designee. If the procurement official or his or her designee approves the recommendation, an award shall be made in accordance with the recommendation.

R-24-103-204 Small Purchases

A contract may be awarded by small purchases procedures. Procurements shall not be artificially divided so as to constitute small purchases under this rule.

R-24-103-204-01 Documented Quotes

A contract for small purchases may be awarded by a documented quote. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to documented quotes.

- (a) The deadline for submission of responses to a documented quote is flexible unless otherwise stated in the documented quote.
- (b) For goods and services procurements, neither the solicitation nor the vendor's response constitutes an offer; therefore, responsiveness at the time of receipt is not an absolute criterion. The procurement official or his or her designee may determine whether a response is acceptable and may compare the relative value of competing responses, not solely the price. "Acceptable," for purposes of this paragraph and paragraphs (c) and (d) below, means that the good or service will meet the state's needs and that the price is fair and reasonable. The commitment voucher constitutes an offer. The vendor may accept by performance, unless the commitment voucher expressly requires acceptance by written acknowledgment.
- (c) The choice of vendor for goods and services must be based on which acceptable response is most advantageous to the state, price/cost being the primary consideration. The basis for the selection must be documented and will be final and conclusive unless determined to be arbitrary, capricious, or contrary to law.
- (d) The procurement official or his or her designee may negotiate with any vendor or contractor to clarify its quote or to effect modifications that will make the quote acceptable (including curing a defective bid bond) or more advantageous to the state; provided, that the requirements in the documented quote solicitation may not be negotiated. During the negotiation process, the terms of a vendor's quote shall not be revealed to a competing vendor. All quotes shall be kept confidential until an award is made on an electronic procurement system.

R-24-103-205 Sole Source Procurements

Contracts may be awarded by use of a sole source procurement only if the following conditions are met:

- (a) A sole source procurement is justified when there is only one good or service that can reasonably meet the need and there is only one vendor who can provide the good or service. A requirement for a particular proprietary item (i.e., a brand name specification) does not justify a sole source procurement if there is more than one potential bidder or offeror for that item.
- (b) The procurement official or his or her designee shall make a written determination that a procurement is sole source, setting forth the reasons. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other contractors will be suitable or acceptable to meet the need.
- (c) When a sole source procurement is authorized, the procurement official or his or her designee shall conduct negotiations, as appropriate, as to price, delivery, and terms.
- (d) When applicable, the procurement official or his or her designee shall publish a notice of the sole source on an electronic procurement system for not less than three business days in accordance with section 24-106-103(5), C.R.S.

R-24-103-206 Emergency Procurements

A contract may be awarded by an emergency procurement when an emergency condition arises.

R-24-103-206-01 Definition of Emergency Conditions

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be identified by the using agency and approved by the procurement official or his or her designee. In the event that emergency controlled maintenance funding is requested, the office of the state architect shall also be notified by the next business day. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten the:

- (a) functioning of state government, or its programs;
- (b) preservation or protection of property; or
- (c) health or safety of any person or persons.

R-24-103-206-02 Scope of Emergency Procurements

Emergency procurements shall be limited to supplies, services, or construction items in such quantities as are necessary to meet the emergency.

R-24-103-206-03 Authority to Make Emergency Procurements

Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods; provided, that whenever practical, approval by the procurement official or his or her designee shall be obtained prior to the procurement. In the event an emergency arises after normal business hours, the governmental body shall notify the procurement official or his or her designee on the next business day.

R-24-103-206-04 Source Selection Methods

- (a) The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
- (b) The procurement official or his or her designee shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor or contractors. If approval from the procurement official or his or her designee is not provided prior to the procurement, the written determination shall be made by the individual involved in making the selection of the contractor or contractors on behalf of the state. Such determination shall be sent promptly to the procurement official or his or her designee.

R-24-103-208 Other Procurement Methods

In addition to the methods of procurement identified in section 24-103-201, C.R.S., the following other procurement methods are allowed:

- (a) Competitive reverse auctions;
- (b) Competitive negotiation;
- (c) Invitation to negotiate; and
- (d) Special circumstance procurement.

R-24-103-208-01 Competitive Reverse Auctions

Contracts for goods and services may be awarded by competitive reverse auctions if the procurement official determines that adequate competition, as defined in rule R-24-103-403-01, can be achieved and that the process is likely to result in better pricing. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to competitive reverse auctions. Competitive reverse auction means a bidding process through which a pre-established group of vendors may post bids for a defined period of time and change their bids as desired during the bidding period.

- (a) An electronic procurement system notice shall include all terms, conditions, and specifications and provide instruction for participating in the process. If the procurement official believes that an electronic procurement system is not likely to yield adequate competition, the purchasing agency may notify potential vendors through additional methods.
- (b) All responsible vendors willing to accept the terms and conditions of the procurement and to meet the specifications of the bid shall be eligible to participate. The purchasing agency may conduct a preliminary evaluation to determine vendor responsibility and to ensure the vendor's responsiveness to terms and specifications.
- (c) During the bidding process, the participating vendors shall be identified only by a letter, number, or other symbol to protect their identities. Each bid price and the letter, number, or symbol designation of the vendor shall be made available to all bidding vendors immediately upon receipt by the purchasing agency.
- (d) The contract shall be awarded to the lowest responsible bidder whose bid meets the requirements and specifications.

R-24-103-208-02 Competitive Negotiation

Contracts may be awarded by competitive negotiation.

- (a) After an unsuccessful solicitation process, a contract may be awarded by competitive negotiation if the procurement official determines that time does not permit re-solicitation.
- (b) A solicitation process is unsuccessful if (1) all offers received are unreasonable or not individually competed; (2) the low bid exceeds available funds; (3) the solicitation has been properly cancelled in accordance with the provisions of section 24-103-301, C.R.S., or part 5 of article 109 of the code (except sections 24-109-503 and 24-109-504, C.R.S., which require prior approval from executive director or his or her designee); or (4) the number of responsive offers is not adequate to ensure adequate competition.
- (c) The competitive negotiation process shall include all vendors who responded to the solicitation or any rebid and may include other vendors capable of fulfilling the state's needs.
- (d) The purchasing agency may set reasonable times and locations for participation in the competitive negotiation, reflecting the fact that time constraints are the basis for the competitive negotiation process.
- (e) Each vendor with whom the purchasing agency negotiates shall be given a fair and equitable chance to compete. Negotiations shall be conducted separately and independently with each vendor. In no case shall the terms of any vendor's offer be communicated to any other vendor until an intent to award notice has been issued. Any change in requirements shall be communicated to all vendors participating in the competitive negotiation.
- (f) A vendor may be eliminated from the process upon a determination that its offer is not reasonably susceptible of being selected for award.
- (g) The award shall be made to the vendor whose offer is most advantageous to the state, taking into consideration the price and the evaluation factors set forth in the solicitation. The procurement official shall make a written determination that identifies the nature of the discussions with each vendor and that states why the selected offer is the most advantageous to the state.

R-24-103-208-03 Invitation to Negotiate

Contracts may be awarded by an invitation to negotiate. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to invitations to negotiate. The invitation to negotiate is intended to solicit responses from potential vendors to determine the best method for achieving a specific goal or solving a particular problem to identify one or more responsive vendors with which the state may negotiate to determine the response that is most advantageous.

- (a) The invitation to negotiate must include, at a minimum, a statement of work or specifications that address the specific goals or problems that are the subject of the solicitation, proposed terms of the resulting contract, and evaluation factors. The invitation to negotiate must describe which items can be negotiated and which are non-negotiable. Anything that is identified as non-negotiable is considered mandatory and may not be waived by the state. Evaluation factors are non-negotiable.

- (b) The state shall evaluate responses against all evaluation factors set forth in the invitation to negotiate. Numerical rating systems may be used. Prior to determining the competitive range of responses reasonably susceptible of award, the state, in its discretion, may hold discussions with any or all responsible vendors who submit responses for the purpose of clarification to assure understanding of the solicitation requirements and the vendor's responses. Vendors shall be accorded fair and equitable treatment. The evaluation, including the results of any discussions, shall result in the determination of a competitive range of responses reasonably susceptible of award.
- (c) The state shall commence negotiations with those vendors whose responses are determined to be in the competitive range. The state may discontinue negotiations with a vendor if the state determines that the response is no longer reasonably susceptible of award. The purpose of negotiations is to facilitate a contract that will be most advantageous to the state, taking into consideration price and the other evaluation factors set forth in the invitation to negotiate.
- (d) The committee(s) established to evaluate the responses and negotiate with vendors whose proposals are in the competitive range shall make a recommendation to the procurement official or his or her designee. If the procurement official or his or her designee approves the recommendation, an award shall be made in accordance with the recommendation.
- (e) The award shall be made to the responsible vendor whose response is determined in writing to be the most advantageous to the state, taking into consideration the price and the evaluation factors set forth in the invitation to negotiate and the result of negotiations. No other factors or criteria shall be used in the evaluation.
- (f) The procurement record shall contain the basis on which the award is made along with an explanation of why the award provides the best value to the state.

R-24-103-208-04 Special Circumstance Procurement

A contract may be awarded by use of a special circumstance procurement. A special circumstance exists where competition is required but procurement methods available in the code or these rules are contrary to the public interest or not advantageous to the state. In these situations, the procurement official may initiate a special circumstance procurement.

- (a) Examples of special circumstance include, but are not limited to:
 - (i) the market for providing a good or service is limited based on specific, tangible requirements;
 - (ii) the market has not matured to the point of providing adequate competition, as defined in rule R-24-103-403-01; or
 - (iii) disclosure of the requirements for the goods or services is contrary to the public interest.
- (b) To qualify a procurement as a special circumstance procurement, the procurement official shall provide a written request to the chief procurement officer, stating the reasons the procurement qualifies as a special circumstance. This request should be supported by sufficient market research and address the requirement of fair and reasonable pricing.
- (c) The determination of the chief procurement officer as to whether the procurement qualifies as a special circumstance procurement shall be final.

PART 3 CANCELLATION OF SOLICITATIONS: REJECTION OF BIDS OR PROPOSALS

R-24-103-301 Cancellation of Solicitations and Awards

The provisions of this rule shall govern the cancellation of any solicitations or other source selection methods, the rejection of bids or proposals in whole or in part, for being non-responsive or non-responsible and the cancellation of awards.

R-24-103-301-01 Cancellation of Solicitation: Rejection of All Bids or Proposals

A solicitation may be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the state's best interest.

- (a) A solicitation may be cancelled, in whole or in part, when the procurement official determines in writing that such action is in the state's best interest. Reasons for cancelling a solicitation include, but not limited to:
 - (i) the state no longer requires the supplies, services, or construction;
 - (ii) the state no longer can reasonably expect to fund the procurement;
 - (iii) prices exceed available funds and it would not be appropriate to adjust quantities or quantities to come within available funds;
 - (iv) all responsive bids or proposals received are at clearly unreasonable prices;
 - (v) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith;
 - (vi) the solicitation did not provide for consideration of all factors of significance to the state;
 - (vii) ambiguous or otherwise inadequate specifications were part of the solicitation; or
 - (viii) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- (b) When a solicitation is cancelled, a notice of cancellation should be sent to all persons that submitted bids or proposals.
- (c) The reasons for cancellation or rejection shall be made a part of the procurement record and shall be confidential for the period of time specified in section 24-103-301, C.R.S.
- (d) When a solicitation is cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement record, or if unopened, returned to the bidders or offerors upon request, at their expense, or otherwise disposed of.

R-24-103-301-02 Cancellation of Award

An award of a contract under a solicitation may be cancelled, in whole or in part, when the procurement official determines in writing that such action is in the state's best interest. Reasons supporting the cancellation of an award include those identified in rule R-24-103-301-01. The cancellation of an award does not require cancellation of the solicitation. No property interest of any nature shall accrue until the awarded contract is approved in accordance with section 24-30-202(2), C.R.S.

R-24-103-301-03 Waiver of Non-Material Mandatory Requirements in Solicitations

The procurement official has the authority to waive mandatory requirements in a solicitation in the event:

- (a) The procurement official has determined that the requirements are not material;
- (b) The solicitation discloses that the state has reserved this right;
- (c) The mandatory requirements have not been met by any of the respondents to the solicitation;
- (d) The waiver does not create a disadvantage to the state;
- (e) The waiver does not benefit any individual bidder or offeror; and
- (f) The waiver does not prejudice any non-winning bidder or offeror or potential bidder or offeror.

PART 4 QUALIFICATIONS AND DUTIES

R-24-103-401 Responsibility of Prospective Contractors or Vendors

A determination of responsibility or non-responsibility shall be governed by these rules.

R-24-103-401-01 Standards of Responsibility

- (a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor:
 - (i) has or can obtain the appropriate financial, material, equipment, facility, personnel resources and expertise to indicate the capability to meet all contractual requirements;
 - (ii) has a satisfactory record of performance;
 - (iii) has a satisfactory record of integrity;
 - (iv) does not appear on any debarred lists;
 - (v) is qualified legally to contract with the state; and
 - (vi) has supplied all necessary information in connection with the inquiry concerning responsibility.
- (b) The prospective contractor or vendor shall supply information requested by the procurement official concerning the responsibility of such contractor. If such contractor or vendor fails to supply the requested information, the chief procurement officer or procurement official shall base the determination of responsibility upon any available information.

R-24-103-401-02 Ability to Meet Standards

The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (a) Evidence that such contractor possesses such necessary items;
- (b) Acceptable plans to subcontract for such necessary items; or

- (c) A documented commitment from, or explicit arrangement with a satisfactory source to provide the necessary items.

R-24-103-401-03 Written Determination of Non-Responsibility Required

If a prospective contractor or vendor who otherwise would have been awarded a contract is found to be non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the procurement official. A copy of the determination shall be sent promptly to the non-responsible prospective contractor or vendor. The determination shall be made part of the procurement record.

R-24-103-402 Prequalification of Suppliers

- (a) The procurement official may develop pre-qualification procedures for specific solicitations.
- (b) Colorado labor shall be employed on a public works project unless a waiver is allowed pursuant to section 8-17-101, C.R.S.

R-24-103-403-01 Cost or Pricing Data Definitions

- (a) "Cost data" is factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- (b) "Pricing data" is factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices, and current selling prices of such supplies, services or construction. The definition refers to data relevant to both prime and subcontract prices.
- (c) "Adequate competition" exists if a solicitation has been conducted and at least two responsible and responsive offerors have independently competed to provide the state's needed supplies or services. If the foregoing conditions are met, competition shall be presumed to be "adequate" unless the procurement official or his or her designee determines, in writing that such competition is not adequate.

R-24-103-403-02 Requirement for Cost or Pricing Data

- (a) Cost data and pricing data shall not be required where the contract price is based on:
 - (i) adequate competition;
 - (ii) established catalog prices;
 - (iii) law or rule; or
 - (iv) where the requirements are waived by the procurement official.
- (b) Unless otherwise specified in these rules, a contractor shall submit cost or pricing data for the pricing of any contract to include sole source procurements, described in rules R-24-103-205 and R-24-105-101.5, where the total contract value is expected to exceed \$150,000.
- (c) Unless otherwise specified in these rules, a contractor shall submit cost data or pricing data for the pricing of any contract modification which is expected to exceed ten percent of the total contract value.

- (d) The procurement official or his or her designee may request cost data or pricing data to be provided within a reasonable time and in a reasonable manner.
- (e) Any disputes related to the submission of cost data or pricing data are subject to the contractor's rights in accordance with article 109 of the code.

R-24-103-403-03 Defective Cost or Pricing Data

- (a) If cost data or pricing data are found to have been inaccurate, incomplete, or non-current as of the date submitted by the contractor, the state is entitled to an adjustment of the contract price to account for the defect.
- (b) Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data.

PART 5 TYPES OF CONTRACTS

PART 6 AUDIT OF RECORDS

PART 7 DETERMINATIONS AND REPORTS

PART 8 SET ASIDES IN STATE PROCUREMENT FOR ALL PERSONS WITH SEVERE DISABILITIES

R-24-103-802 Definitions

All terms used in rules under this part 8 have the same meaning as defined in section 24-103-802, C.R.S. Section 24-103-802(2), C.R.S., defines "department" as the department of human services, solely for the purposes of part 8 of article 3 of the code.

R-24-103-803-01 Nonprofit Agencies – Application

A nonprofit agency seeking inclusion on the self-certified vendor list shall complete an application describing the services it is able to provide and certifying its eligibility as a self-certified vendor. The department shall make the application form available electronically and shall accept applications for consideration throughout the calendar year. Approved applications will be added the self-certified vendor list in accordance with rule R-24-103-804-01.

R-24-103-803-02 Self-certified Vendor List – Creation

The department shall update the self-certified vendor list to include newly self-certified vendors and remove vendors that have not recertified pursuant to section 24-103-803(4), C.R.S.

R-24-103-804-01 Services Set Aside List – Creation, Determination, and Review

- (a) The department shall review each application for certification as required in section 24-103-803(2), C.R.S.
- (b) The department shall identify a specific date for updating the services set aside list annually with new self-certified vendors and services, if any. As determined by the department, quarterly updates to the services set aside list may be made for new self-certified vendors or services accepted in accordance with section 24-103-803(2), C.R.S.

R-24-103-804-02 Services Set Aside List – Publication

The department shall provide the services set aside list to the chief procurement officer, who shall make the services set aside list available to all state agencies electronically.

R-24-103-805 Bid Process

- (a) If a service is not on the services set aside list, the state agency may proceed with another method of source selection as provided in the code.
- (b) Prior to obtaining services through a set aside solicitation, the state agency must comply with the same requirements that must be met for services obtained through other methods of source selection as provided in the code and these rules.
- (c) A state agency shall send a statement of work describing the needed services to all self-certified vendors who have indicated they can provide the service in the services set aside list.
- (d) The self-certified vendors will have a minimum of three business days to respond, unless otherwise extended by the state agency. Responses from self-certified vendors must demonstrate their ability to meet the requirements and include pricing.
- (e) Responses from self-certified vendors shall be evaluated and a contract will be awarded based on which acceptable response is most advantageous to the state taking into consideration factors other than price alone.
- (f) If no responses from self-certified vendors are received within the designated response time, the state agency may proceed with another method of source selection as provided in the code.

PART 9 PROCUREMENT PREFERENCES AND GOALS

R-24-103-901 Use of Preferences

The underlying purposes of this code foster effective broad-based competition within the free enterprise system and ensure the fair and equitable treatment of all persons who deal with the procurement system of the state. In furtherance of these purposes, procurement officials and procurement agents are encouraged to maximize opportunities for small businesses, minority-owned businesses, woman-owned businesses, veteran-owned businesses, and businesses that employ people with disabilities to compete for state contracts. No provision is made in the code for preferences or set asides for minority-owned or women-owned businesses.

R-24-103-904 Definition

“Costs of ownership life cycle analysis” means an accounting of the estimated total cost of ownership, including but not limited to: initial costs; operational costs; longevity; stranded utility costs; and service and disposal costs; along with an assessment of life-cycle environmental; health and energy impacts resulting from new material extraction; transportation; manufacturing; use; and disposal.

ARTICLE 104 SPECIFICATIONS

PART 1 DEFINITIONS

PART 2 SPECIFICATIONS

R-24-104-202 Brand Name or Equal Specification: Conditions for Use

“Brand name or equal specification” means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which allows for the submission of equivalent products. Brand name or equal specifications may be used when it is in the best interest of the state and when the item to be procured is best described by use of such a specification.

R-24-104-202-01 Brand Name Specifications: Conditions for Use

“Brand name specification” means a specification limited to one or more items by manufacturer's names or catalogue numbers. Since use of a brand name specification is restrictive, it may be used when only the brand name or items will satisfy the state's needs. The procurement agent shall seek to identify sources from which the designated brand name or item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable.

R-24-104-202-02 Qualified Products List: Conditions for Use

“Qualified products list” means an approved list of supplies, services or construction items described by model or catalog numbers, which, prior to competitive solicitation, the state has determined will meet the applicable specification requirements. A qualified products list may be developed with the approval of the procurement official when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary to best satisfy the state's requirements.

ARTICLE 105 CONSTRUCTION CONTRACTS

PART 1 MANAGEMENT OF CONSTRUCTION CONTRACTING

R-24-105-101 Selection Methods

The following rules apply to state agencies and state institutions of higher education, as defined in section 24-30-1301(17) and (18), C.R.S., for all methods of source selection for construction unless otherwise exempt in accordance with sections 24-30-1301(15)(b)(II) and (III), C.R.S., or a waiver has been granted by the office of the state architect. Additional methods of source selection in article 103 of these rules may be considered for construction if permitted through delegation and approval of the office of the state architect. However, in the event of a conflict, the rules in article 105 will govern source selection for construction. For methods of source selection for other than construction, see rules implementing article 103 of the code.

R-24-105-101-01 Terminology

- (a) The following terms provide a common vocabulary for use in the context of this rule and for general discussion concerning the construction contracting activities of the state. The methods described are not all mutually exclusive and may be combined on one project. In each project these terms may be adapted to fit the circumstances of that project. However, the procurement official should endeavor to ensure that these terms are defined adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties. Significant deviations from the terms provided in this rule should be explicitly noted in the contract.

- (b) "Prime contractor," as used in this article means a person who has a contract with the state to build, alter, repair, improve, or demolish any public structure or building, or other public improvements of any kind on any public real property.
- (c) The "single prime contractor method" of contracting is typified by one person (general contractor) contracting with the state to timely complete an entire construction project in accordance with plans and specifications provided by the state. Often these plans and specifications are prepared by a private architectural firm under contract to the state. Further, while the general contractor must take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.
- (d) In a "design-build or turnkey project," a contractor contracts directly with the state to meet the state's requirements as described in a set of performance specifications by constructing a facility using the contractor's plans and specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.
- (e) "Construction management" is a team approach to construction. A construction manager/general contractor is a person experienced in construction that has the ability to evaluate and implement plans and specifications as they affect time, cost, and quality of construction and to coordinate the design team (consisting of architect/engineers and other consultants as may be required). The construction manager/general contractor contracts directly with sub-contractors for performance of the construction of the project and, administers change orders.
- (f) "Phased design and construction" denotes a method in which construction begins when appropriate portions have been designed, but before substantial design of the entire structure has been completed. This method is also known as "fast-track" construction.

The above defined methods of construction contracting are not to be construed as an exclusive list. Consult with the office of the state architect for approval of a construction contracting method other than a single prime contractor. In selecting the appropriate construction contracting method, consideration must be given to all appropriate and effective methods, their comparative advantages and disadvantages and how they might be adapted or combined to fulfill state requirements.

R-24-105-101-02 Purchasing Thresholds

Purchases of construction services and supplies may be made as follows:

- (a) All agencies may procure construction services and supplies up to \$25,000 without benefit of competition.
- (b) Small purchases procedures may be used to procure services and supplies for construction projects costing less than \$150,000.
- (c) Invitations for bids or requests for proposals must be used to procure services and supplies for construction projects estimated to exceed the small purchase threshold of \$150,000.

R-24-105-101-03 Solicitation Publication Time

Except as provided under emergency procedures, described in R-24-105-101.6, solicitations shall be published on an electronic procurement system as follows:

- (a) Documented quotes, described in rule R-24-105-101.4, shall be published for at least three consecutive business days.

- (b) Invitation for bids shall be published for at least 14 consecutive business days. The posting time for an invitation for bids shall not be reduced to a shorter time.
- (c) Requests for proposals shall be published for at least 30 consecutive calendar days. When special requirements or conditions exist, the procurement official may shorten the posting time for a request for proposal, but in no case shall the time period be shortened to reduce competition. The procurement official shall document the reason a reduced time period was necessary in the procurement record.
- (d) When special requirements or conditions exist, the procurement official may lengthen the posting time.

R-24-105-101-04 General Bidding Provisions

- (a) For purposes of the rules under article 105 of the code, use of the term “bid”, “bids”, “proposal” and “proposals” are interchangeable based on the solicitation method.
- (b) After opening bids or proposals, the procurement official may request low bidders to extend the time during which the state may accept their bids or proposals, provided that no other change is permitted. The reasons for requesting such extension shall be documented in the procurement record.
- (c) If only one responsive bid or proposal is received in response to a solicitation, an award may be made to the single bidder if the procurement official finds that the price submitted is fair and reasonable and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. In the event that all bids for a construction project exceed available funds, as certified by the appropriate fiscal officer, the procurement official is authorized in accordance with section 24-103-202(7), C.R.S., in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsible bidder in order to bring the bid within the amount of available funds; except that the functional specifications integral to completion of the project may not be reduced in scope, taking into account the project plan, design, and specifications and quality of materials. Otherwise, the bid must be rejected and:
 - (i) new bids may be solicited; or
 - (ii) the proposed procurement may be cancelled; or
 - (iii) if the procurement official determines in writing that the need for the construction continues but that the price of the one bid or proposal is not fair and reasonable and there is no time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted as a sole source procurement under rule R-24-105-101.5 or an emergency procurement under rule R-24-105-101.6, as appropriate.
- (d) An alternate bid or proposal means an offer or response submitted in response to a solicitation issued by the state that is in essential compliance with the solicitation terms and conditions but offers an alternate that does not significantly deviate from the required specifications contained in the solicitation. The procurement official would be responsible for determining whether an alternate bid or proposal is acceptable.
- (e) A solicitation may prohibit multiple or alternate bids or proposals. When prohibited the multiple or alternate bids or proposals shall be rejected although a clearly identified base bid or proposal will be considered for award as though it were the only bid or proposal submitted by the bidder or offeror. A solicitation shall specify if multiple or alternate bids or proposals will be allowed and how they will be treated.

- (f) Any bid or proposal which is conditioned upon receiving an award under both the particular solicitation for which the bid or proposal is made and another state solicitation shall be deemed nonresponsive and unacceptable.
- (g) Affiliates are prohibited from submitting bids for the same contract. An "affiliate" of a bidder or offeror is any person directly or indirectly:
 - (i) controlling;
 - (ii) controlled by; or
 - (iii) under common control with the bidder or offeror.
- (h) The procurement official may determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.
- (i) All construction bidding and contracting procedures shall utilize standard state forms, which are available on-line from the website of the office of the state architect. Any changes or modifications of the state forms, including general conditions of the contract, shall not be valid unless issued in the form of supplementary general conditions and approved by the office of the state architect.
- (j) Invitations for bids or invitation for best value bids may be used for public projects that have no federal funding involved, pursuant to sections 24-92-103 and 24-92-103.5, C.R.S.

R-24-105-101-05 Content of Solicitations

- (a) The notice of the invitation for bids or request for proposals shall include the following information and statements:
 - (i) date, time and location of the bid opening;
 - (ii) project number, name and location;
 - (iii) project time of completion;
 - (iv) location where bidding documents may be obtained;
 - (v) deposit required, if any, for a complete set of contract documents;
 - (vi) preference shall be given to Colorado resident bidders and for Colorado labor as provided by law;
 - (vii) when the use of federal funds is involved, the rate of wages to be paid for all laborers and mechanics shall be in accordance with the applicable Davis-Bacon rates of wages for the project. Such rates will be specified in the general contract documents.
- (b) Solicitations may incorporate documents by reference, provided, that the solicitation specifies where such documents can be obtained.
- (c) The solicitation response shall require the acknowledgment of the receipt by the bidder or offeror of all addenda issued to the solicitation.

- (d) Bidding time is the period of time between the date of the advertisement for bids and the date set for opening of bids. In each case, the bidding time shall provide bidders a reasonable time to prepare their bids.
- (e) Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders. The conference shall be held long enough after the solicitation has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the solicitation unless a change is made by written addendum as provided elsewhere in these rules and the solicitation and the notice of the pre-bid conference shall so provide.

R-24-105-101-06 Public Notice

Notice of the solicitation shall be advertised in accordance with the provisions of sections 24-70-101 through 24-70-107, C.R.S., and these rules. The notice will be advertised as described in the solicitation or in an electronic medium approved by the executive director pursuant to section 24-92-103(3), C.R.S. Publication of the notice shall occur twice, one week apart. Nothing in these rules shall prevent the procurement official from advertising or otherwise giving public notice in additional media and locations.

R-24-105-101-07 Addenda and Clarifications

- (a) If addenda or clarifications result in any material changes to the scope of work or otherwise affect the manner or form of response, the procurement official or his or her designee must notify all known potential bidders.
- (b) Addenda to solicitations shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued in the bidder's response. Each addendum shall reference the portions of the solicitation it amends.
- (c) Addenda shall be posted on an electronic procurement system with sufficient time to allow prospective bidders or offerors to consider them in preparing their bids or proposals. If the time set for bid or proposal opening will not permit such preparation, such time shall be increased in the addendum.
- (d) Refer to rule R-24-103-201-14, regarding discussions with bidders or offerors.

R-24-105-101-08 Form of Submissions

- (a) Bidders and offerors must execute and submit bids and proposals on the form prescribed by the office of the state architect, and as specified by the solicitation. A bid or proposal received on any other form will be unresponsive.
- (b) Electronic bids or proposals shall be in accordance with rule R-24-103-201-11.

R-24-105-101-09 Mistakes in Bids or Proposals

When it appears from a review of the bid or proposal that a mistake has been made, the procurement official should request that the bidder or offeror confirm the bid or proposal and shall take such further action as may be required in rule R-24-103-201-08.

R-24-105-101-10 Withdrawal of Bids or Proposals

Any bid or proposal may be modified or withdrawn by written notice to the appropriate purchasing agency prior to the specified bid opening date and time as described in rule R-24-103-201-09.

R-24-105-101-11 Timeliness of Bids or Proposals

Bids or proposals received after the bid or proposal opening time shall not be opened, and shall be rejected as a late response. Exceptions may be permitted by the procurement official pursuant to rule R-24-103-201-10.

R-24-105-101-12 Alternate Bids

Alternate bids shall be governed by rule R-24-103-201-12.

R-24-105-101-13 Opening and Recording of Bids and Proposals

- (a) Upon receipt, all bids and proposals shall be recorded to reflect the date and time they were received by the purchasing agency, but shall not be opened.
- (b) Bids and proposals shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the solicitation. A register of bids and proposals shall be prepared which shall include the name of each bidder or offeror that responded.
- (c) The procurement agent shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing in accordance with rules R-24-101-401-01 through R-24-101-401-05.
- (d) Documented quotes, described in rule R-24-103-204-01, do not require a public opening and may be opened upon receipt. However, a register of responses shall be prepared.

R-24-105-101-14 Bid and Proposal Evaluation and Award

- (a) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids or request for proposals. The invitation for bids or request for proposals shall set forth the requirements and criteria which will be used to determine the acceptability of a response.
- (b) Bids and proposals will be evaluated to determine which bidder or offeror offers the lowest cost to the state in accordance with the evaluation criteria set forth in the invitation for bids and request for proposals. Only objectively measurable criteria set forth in the invitation for bids or request for proposals shall be applied in determining the lowest bidder.
- (c) Evaluation criteria need not be precise predictors of actual future cost, but to the extent possible such evaluation criteria shall:
 - (i) provide reasonable estimates based upon information the state has available concerning future use; and
 - (ii) treat all bids equitably.
- (d) A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids or request for proposals, unless such bidder is also the lowest bidder as determined by value analysis or life-cycle cost formulas as permitted in this rule.

R-24-105-101-15 Forms

All construction contracts and procedural documents shall be executed on standard state of Colorado forms available on-line on the office of the state architect website.

R-24-105-101-16 Use of Electronic Procurement Systems - Notice of Construction Projects and Professional Services

For all construction projects and for all procurements for professional services (as defined in section 24-30-1402(6), C.R.S.) for which competitive notification or solicitation procedures are required, a notification must be placed on an electronic procurement system, and the award must be posted on the same electronic procurement system.

- (a) Detailed specifications need not be included in the notice, but all information must be open to public view, without password protection.
- (b) Contractors and bidders need not be registered for an electronic procurement system in order to be deemed responsive.

R-24-105-101.2-01 Multi-Step Invitation for Bids

A contract may be entered into by multi-step invitation for bids. Unless otherwise specified, the general rules under rule R-24-103-202-03 shall apply to multi-step invitation for bids.

- (a) The multi-step invitation for bid method will be used when it is not practical to initially prepare a definitive scope of work which will be suitable to permit an award based on price. Utilization of this method requires prior approval from the office of the state architect.
- (b) The procedure for multi-step invitation for bid will be set forth in office of the state architect policies.

R-24-105-101.3-01 Invitation for Best Value Bids

The use of invitation for best value bids shall follow the requirements in accordance with rule R-24-103-202.3 and section 24-92-103.5, C.R.S., for construction projects.

R-24-105-101.3-02 Disclosure

An agency choosing between methods of invitation for bids or invitation for best value bids shall disclose the rationale behind its decision in accordance with section 24-92-103.7, C.R.S.

R-24-105-101.3-03 Evaluation

The criteria for evaluating invitations for best value bids shall be those in section 24-92-103.5(3), C.R.S.

R-24-105-101.4 Documented Quotes

- (a) Services and supplies for construction projects between \$25,000 and \$150,000 may be purchased using a documented quote process.
- (b) The contractor's response constitutes an offer and is binding if accepted by the state.
- (c) The contractor's response must be on their letterhead or in a format approved by the state.
- (d) The award must be made to the low acceptable quote.
- (e) Requests for documented quotes must be placed on an electronic procurement system in accordance with these rules. Solicitations must remain posted for at least three business days unless the director or head of a purchasing agency determines in writing that a lesser time is required in order to meet an immediate state need.

- (f) The procurement official or his or her designee may negotiate with any vendor or contractor to clarify its quote or to effect modifications that will make the quote acceptable (including curing a defective bid bond) or make the quote more advantageous to the state. However, in the negotiation process, the terms of one vendor's quote shall not be revealed to a competing vendor, and quotes shall be kept confidential until a commitment voucher is issued.
- (g) State agencies and state institutions of higher education, with the approval of the office of the state architect, may utilize a standing order process for projects less than \$150,000. An approved process must include open public solicitation (including advertising on an electronic procurement system) for eligible contractors at least once per year, a process for obtaining at least three quotes before awarding a contract to an eligible contractor, and an equitable process for determining which contractors will be given an opportunity to provide quotes.
- (h) Bonding and retainage requirements set forth in section 38-26-106, C.R.S., section 24-105-201, et seq., C.R.S., and section 24-91-103(1), C.R.S., and rules promulgated thereunder are not affected by this rule. Failure to provide a required bid bond, if not cured, makes the quote unacceptable. State agencies and state institutions of higher education should seek legal advice when bid bonds have been required and the terms of the quote are modified after receipt.

R-24-105-101.5 Sole Source Procurements

Contracts for capital construction or controlled maintenance may be awarded by use of a sole source procurement only after consulting with the office of the state architect and only if the following conditions are met:

- (a) A sole source procurement is justified when there is only one service that can reasonably meet the need and there is only one vendor who can provide the service.
- (b) The procurement official or his or her designee shall make a written determination that a procurement is sole source, setting forth the reasons in the procurement record. For purposes of this rule, the procurement official is delegated in accordance with section 24-102-302(2), C.R.S.
- (c) In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.
- (d) When a sole source procurement is authorized, the procurement official or his or her designee shall conduct negotiations, as appropriate, as to price, delivery, and terms.
- (e) When applicable, the procurement official or his or designee shall publish a notice of the sole source on an electronic procurement system for not less than three business days in accordance with section 24-106-103(5), C.R.S.

R-24-105-101.6 Emergency Procurements

Contracts may be awarded by use of an emergency procurement.

R-24-105-101.6-01 Definition of Emergency Conditions

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be identified by the using agency and approved by the chief procurement officer, the procurement official, or a designee of either officer. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (a) The functioning of state government, or its programs;
- (b) The preservation or protection of property; or
- (c) The health or safety of any person or persons.

R-24-105-101.6-02 Scope of Emergency Procurements

Emergency procurements shall be limited to supplies, services, or construction items in such quantities as are necessary to meet the emergency.

R-24-105-101.6-03 Authority to Make Emergency Procurements

- (a) Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided, that whenever practical, approval by the chief procurement officer, the procurement official, or a designee of either officer, shall be obtained prior to the procurement. For purposes of this rule, procurement official is delegated in accordance with section 24-102-302(2), C.R.S.
- (b) If emergency controlled maintenance funding is to be requested by the governmental body, the office of the state architect shall be notified no later than the next business day.
- (c) In the event an emergency arises after normal business hours, the governmental body shall notify the chief procurement officer, the procurement official, or a designee of either officer, and the office of the state architect no later than the next business day.

PART 2 BONDS

R-24-105-201 Acceptable Bid Security

Bid security is submitted as a guarantee that the bid or proposal will be maintained in full force and effect for a period of thirty (30) days after the opening of the bids or proposals or as specified in the solicitations. Acceptable bid security shall be limited to:

- (a) A one-time bid bond underwritten by a company licensed to issue bid bonds in the state of Colorado, and in the form prescribed in section 24-105-203, C.R.S.; or
- (b) A bank cashier's check made payable to the treasurer of the state of Colorado; or
- (c) A bank certified check made payable to the treasurer of the state of Colorado.

R-24-105-202 Exceptions

If it is deemed to be in the state's best interest, the procurement official may require, as provided in section 24-105-202(2), C.R.S., a performance bond or other security in addition to those bonds or in circumstances other than those specified in section 24-105-202(a), (b), C.R.S., as amended.

R-24-105-203 Bond Forms and Copies

All construction contracts and procedural documents shall be executed on standard state of Colorado forms available on the office of the state architect website.

PART 3 CONSTRUCTION CONTRACT CLAUSES AND FISCAL RESPONSIBILITY

ARTICLE 106 MODIFICATION AND TERMINATION OF CONTRACTS (FOR OTHER THAN CONSTRUCTION)

R-24-106-104 Cost-Plus-a-Percentage-of-Cost

A cost-plus-a-percentage-of-cost contract is a contract in which the vendor is paid for allowable costs plus a percentage of the allowable costs as profit and the costs are unknown. Cost-plus-a-percentage-of-cost does not include purchases where the cost is known at the time the obligation is incurred, regardless of how the vendor determines those costs.

R-24-106-105-01 Definition

“Multiyear contract” means a contract for the purchase of supplies or services with a performance period of more than twelve months at the time of its initial execution. A contract with a performance period of twelve or fewer months with subsequent renewal options on the part of the state of no more than one year does not constitute a multiyear contract. Written approval by the procurement official or his or her designee is required prior to entering into a multiyear contract.

R-24-106-105-02 Pre Contract

Contracts, including multiyear contracts, for periods in excess of five years, including the initial term and all extensions, shall only be executed with written permission from the chief procurement officer. Where applicable, the maximum approved term must be included in the method of source selection.

R-24-106-105-03 Post Contract

Requests for extensions of contracts, including multiyear contracts, for periods in excess of the term included in the original method of source selection, as described in article 103 of the code, shall be submitted to the chief procurement officer for approval. The chief procurement officer will determine if extenuating circumstances support an extension of the contract.

R-24-106-105-04 Short Term Extensions

End of contract extensions, also known as a holdover of a contract, allow for a short-term extension of a contract at the end of its current term. In contracts where an end of contract extension is permitted, exercising this extension does not require written permission from the chief procurement officer.

R-24-106-105-05 Conditions for Extensions and Pricing

Any contract with allowable extensions shall contain conditions for exercising the extensions. Methods used to determine price escalation or de-escalation shall be part of the original method of source selection and made a part of the resulting contract.

R-24-106-109 Terms and Conditions in Contracts

Section 24-106-109, C.R.S., applies to all contracts entered into by the state.

ARTICLE 107 COST PRINCIPLES

ARTICLE 108 SUPPLY MANAGEMENT

ARTICLE 109 REMEDIES

PART 1 PRELITIGATION RESOLUTION OF CONTROVERSIES

R-24-109-102-01 Filing of Protest

- (a) An aggrieved party may file a written protest at any phase of solicitation or award concerning a material issue(s), including but not limited to specifications, award, or disclosure of information marked confidential in the bid or proposal.
- (b) The written protest shall include, at a minimum, the following:
 - (i) name and address of the aggrieved party;
 - (ii) appropriate identification of the procurement by solicitation or award number;
 - (iii) a statement of the material issue(s) giving rise to the protest; and
 - (iv) any available exhibits, evidence, or documents substantiating the protest.
- (c) A written protest shall be submitted to the procurement official by mail, hand delivery, electronic submission or other means as approved by the state.
- (d) A written protest must be received by the procurement official by the deadline set forth in section 24-109-102, C.R.S., and rule R-24-109-108.
- (e) If an action concerning the protest has been commenced in district court, the procurement official shall not act on the protest but shall refer it to the attorney general.

R-24-109-102-02 Requested Information

Any additional information regarding the protest should be submitted within the time period requested by the procurement official in order to expedite resolution of the protest. If any party fails to comply expeditiously with any request for additional information by the procurement official, the protest may be resolved without such information.

R-24-109-102-03 Decision

The written decision issued by the procurement official shall inform the aggrieved party of his or her right to appeal administratively or judicially in accordance with article 109 of the code.

R-24-109-105-01 Suspension

- (a) After consultation with the affected using agency, the attorney general, and where practicable, the contractor or potential contractor who is to be suspended, the procurement official may issue a written determination to suspend a person from consideration of contracts pending an investigation to determine whether cause exists for debarment. A notice of suspension, including a copy of the determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall:
 - (i) state that the suspension will be for the period necessary to complete an investigation into possible debarment, as limited in section 24-109-105, C.R.S.;

- (ii) inform the suspended contractor or prospective contractor that bids or proposals will not be solicited from the contractor or prospective contractor and, if received, will not be considered during the period of suspension; and
 - (iii) inform the contractor or prospective contractor of his or her right to appeal administratively or judicially in accordance with article 109 of the code.
- (b) A contractor or prospective contractor shall be suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals.
- (c) For purposes of this section, the conduct of an individual may impact the suspension of a contractor or prospective contractor based on factors such as the individual's position with the contractor or prospective contractor to include but not limited to an officer, director, partner, manager, key employee, or other principal of the contractor or prospective contractor.

R-24-109-105-02 Debarment

- (a) Following completion of the investigation to determine whether a contractor or prospective contractor has engaged in activities which are a cause for debarment, and after consultation with the affected using agencies and attorney general, the procurement official may debar a contractor or prospective contractor for their department only. A written notice of debarment shall be sent to the debarred person by certified mail, return receipt requested. The notice shall inform the debarred person of his, her or its right to appeal the decision administratively or judicially in accordance with article 109 of the code.
- (b) A debarment decision will take effect 20 business days after the date the written notice of debarment is sent by certified mail unless an appeal of the debarment is filed during that time. After the debarment decision takes effect, the person shall remain debarred for the debarment period specified in the decision, unless a court, the executive director, or the procurement official who issued the debarment decision orders otherwise.
- (c) If an appeal is filed by the debarred person prior to the effective date of the debarment, the suspension shall remain in effect until the appeal has been resolved. In the event the appeal is denied, the debarment shall be effective on the completion of the initial 20 business day period or upon resolution of the appeal, whichever is later.
- (d) For purposes of this section, the conduct of an individual may impact the debarment of a contractor or prospective contractor based on factors such as the individual's position with the contractor or prospective contractor to include but not limited to an officer, director, partner, manager, key employee, or other principal of the contractor or prospective contractor.

R-24-109-105-03 Statewide Debarment

Following a debarment decision under rule R-24-109-105-02, the procurement official may recommend statewide debarment to the chief procurement officer. The chief procurement officer or his or her designee shall investigate, including consultation with the affected using agencies and attorney general, to determine whether a contractor or prospective contractor has engaged in activities which are a cause for statewide debarment. After the debarment decision takes effect, the person shall remain debarred for the debarment period specified in the decision, unless a court, the executive director, or the chief procurement officer orders otherwise.

R-24-109-105-04 Lists of Suspended and Debarred Persons

- (a) The chief procurement officer shall maintain a current list of all debarred and suspended persons and shall share such lists and updates to the procurement officials. The list shall indicate whether the suspension or debarment is specific to a purchasing agency or statewide.
- (b) The procurement official or his or her designee shall consider the suspended and debarred list when determining responsibility of prospective contractors for consideration of contracts.
- (c) In the event a contractor on the debarred and suspended list has an existing contract with another purchasing agency, the procurement official of the other purchasing agency or his or her designee shall follow the terms of the contract regarding suspension or termination of said contract if deemed in the best interest of the state.

R-24-109-106-01 Resolution of Controversies

The code establishes procedures and remedies to resolve contract and breach of contract controversies between the state and a contractor. It is the state's intent to try to resolve all controversies by mutual agreement through informal discussions without litigation. As used in these rules, the word "controversy" is meant to be broad and all-encompassing, including the full spectrum of disagreements from pricing of routine contract changes to claims of breach of contract

R-24-109-106-02 Filing of Controversy

- (a) A contractor may file a controversy with the procurement official concerning breach of contract, mistake, misrepresentation, or any other cause for contract modification or rescission.
- (b) The written request for a decision related to a controversy shall include, at a minimum, the following:
 - (i) name and address of the contractor;
 - (ii) appropriate identification of the contract;
 - (iii) a description of the controversy; and
 - (iv) any available exhibits, evidence, or documents substantiating the controversy.
- (c) The controversy shall be submitted to the procurement official or his or her designee in accordance with the terms of the contract or if not specified in the contract, by mail, hand delivery, electronic submission or other means as approved by the state.

R-24-109-106-03 Decision

- (a) Before issuing a final decision, the procurement official or his or her designee shall review the facts pertinent to the controversy and secure any necessary assistance from legal, fiscal, and other advisers.
- (b) The procurement official or his or her designee shall furnish a copy of the decision to the contractor within the time specified in section 24-109-106(1.5), C.R.S., by certified mail, return receipt requested. The decision shall include:
 - (i) a description of the controversy;
 - (ii) a reference to the pertinent contract provision;

- (iii) a statement of the factual areas of agreement and disagreement;
 - (iv) the supporting rationale for the decision; and
 - (v) notice of the contractor's right to appeal the decision administratively or judicially in accordance with the provisions of article 109 of the code.
- (c) The amount and interest on the amount determined payable pursuant to the decision, less any portion already paid, should be paid without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party. If, on appeal, such payments are required to be returned, interest shall be paid by the contractor from the date of payment.

R-24-109-108 Timeliness of Submissions

For purposes of the rules under article 109 of the code, submissions from an aggrieved party must be received by the executive director, chief procurement officer, or procurement official, or a designee of any such officer, by the deadlines established in article 109 of the code and the associated rules, unless otherwise agreed upon in writing by the parties. Submissions received after the deadlines specified in article 109 of the code and associated rules or as agreed upon, shall be rejected as late. The following exceptions may be considered when determining the timeliness of a submission:

- (a) If an aggrieved party's submission is not delivered by the deadlines established in article 109 of the code, the submission may be accepted if it can be reasonably determined by the executive director, chief procurement officer, or procurement official, or a designee of any such officer, that:
 - (i) the postal service, a courier or delivery service outside of the control of the vendor, was in possession of the submission at the specified deadline; and
 - (ii) the submission was originally scheduled for delivery by the postal service, a courier or delivery service outside of the control of the vendor to the purchasing agency by the specified deadline; and
 - (iii) the submission is received by the purchasing agency on the business day following the specified submission date.
- (b) A submission that is in the possession of the state's internal distribution system at the specified submission time shall be deemed to be received by the purchasing agency by the specified submission deadline.
- (c) In the event of a labor unrest (strike, work slowdown, etc.) which may affect mail delivery, the executive director or chief procurement officer is authorized to develop and issue emergency procedures.
- (d) In those situations where the late submission was not in the control of the aggrieved party at the time of the submission deadline, the procurement official shall not accept the late submission unless he or she further finds that extenuating circumstances justifying acceptance of the late submission exist and can be documented.
- (e) The responsibility for ensuring that the submission is received on time rests with the aggrieved party, and the reasonably foreseeable problems inherent in the delivery of submissions (e.g. slow messengers, slow mail service, weather, bad directions, mechanical failures, traffic, etc.) are not extraordinary circumstances permitting acceptance of late submissions.

PART 2 APPEALS

R-24-109-201 Appeal to the Executive Director – Stay of Procurements

At any time an aggrieved party files an appeal to district court in accordance with section 24-109-205, C.R.S., the stay in subsection (2) of section 24-109-201, C.R.S. shall terminate.

R-24-109-202-01 Filing of Appeals

- (a) An aggrieved party may file a written appeal of any decision. Appeals of decisions of the procurement official shall be submitted in writing to the executive director within ten (10) business days of the date a decision is mailed or within twenty (20) business days of a decision regarding a suspension, debarment or contract controversy, in accordance with section 24-109-203, C.R.S. Appeals received after the prescribed time periods shall not be considered
- (b) The written appeal shall include, at a minimum, the following:
 - (i) name and address of the aggrieved party;
 - (ii) appropriate identification of the procurement by solicitation or award number;
 - (iii) a statement of the material issue(s) or controversy giving rise to the appeal;
 - (iv) copies of all documents and evidence previously submitted to the procurement official or his or her designee;
 - (v) the decision rendered by the procurement official or his or her designee or, in the absence of a timely decision under subsection 3 of section 24-109-102, C.R.S., a statement of this fact; and
 - (vi) any additional relevant information.
- (c) The written appeal shall be limited to the material issues raised in the original protest.
- (d) A written appeal shall be submitted to the executive director or his or her designee in a manner such as mail, hand delivery, or electronic submission such as email. The means of delivery must be commonly used to reasonably allow for receipt by the executive director or his or designee.
- (e) A written appeal must be received by the executive director or his or her designee by the deadline computed in accordance with rule R-24-109-108.

R-24-109-202-02 Additional Information

The executive director or his or her designee may request that the parties submit any additional information necessary to make a decision on the appeal. If any party fails to submit requested information within the time period set by the executive director or his or her designee, the appeal may be considered without such information.

R-24-109-202-03 Hearing by the Executive Director

- (a) An aggrieved party bringing an appeal may request in writing that the executive director or his or her designee conduct a hearing on the appeal.

- (b) If a hearing is requested, the executive director or his or her designee shall send a written notice of the time and place of the hearing to all parties and the attorney general. Such notice shall be sent by certified mail, return receipt requested.
- (c) Hearings shall be as informal as possible under the circumstances. The weight to be attached to any evidence presented shall be within the discretion of the executive director or his or her designee. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The executive director or his or her designee may request evidence in addition to that presented by the parties. A hearing may be recorded but need not be transcribed except at the request and expense of the aggrieved party. A record of those present, identification of any written evidence presented, copies of all written statements, and a summary of the hearing shall be sufficient record. The executive director or his or her designee may:
 - (i) hold informal conferences with one or both of the parties to settle, simplify, or fix the issue or to consider other matters that may aid in an expeditious disposition of the appeal;
 - (ii) require parties to state their position with respect to the various issues;
 - (iii) require parties to produce for examination those relevant witnesses and documents under their control;
 - (iv) regulate the course of the hearing and conduct of participants;
 - (v) receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious; and
 - (vi) request and set time limitation for submission of briefs.

R-24-109-204 Decision of the Executive Director

- (a) The executive director or his or her designee shall issue a final decision on the issue. Copies of the decision shall inform the aggrieved party of his or her rights to judicial appeal in accordance with article 109 of the code. However, if an action concerning the protest, suspension, debarment, or contract controversy has been commenced in court, the executive director or his or her designee shall not act on the matter but shall refer it to the attorney general.
- (b) If the executive director or his or her designee refers an appeal to the office of administrative courts in accordance with section 24-109-201(1), C.R.S., the timeline for a written decision may be adjusted based on section 24-4-105, C.R.S.

R-24-109-205 Appeals to District Court

If at any time an aggrieved party files an appeal to district court, the stay of the award imposed by subsection (2) of section 24-109-201, C.R.S., shall terminate.

PART 3 INTEREST

PART 4 SOLICITATIONS AND AWARDS IN VIOLATION OF THE LAW

R-24-109-404-01 Definitions

- (a) An “unauthorized purchase” is when a purchase has occurred or a purchase commitment has been issued to a vendor to obtain goods, services, or construction and:
 - (i) the using agency has not followed the code and rules; or

- (ii) a purchase or commitment to purchase is made by a person(s) who is not so authorized.
- (b) "Ratification" is the approval of an unauthorized purchase by the executive director, chief procurement officer or using agency's procurement official, to the extent authorized under rule R-24-109-404-02, following a review and consideration of all to the facts surrounding the unauthorized purchase.
- (c) "Responsible individual(s)" is the person(s) who has made an unauthorized purchase.

R-24-109-404-02 Authority of the Executive Director, Chief Procurement Officer and Procurement Official

- (a) The executive director or chief procurement officer, or designee of either officer, after review and consideration of all facts involved in an unauthorized purchase, may ratify the unauthorized purchase in accordance with rules R-24-109-404-04 and -05.
- (b) A procurement official, after review and consideration of all facts involved in an unauthorized purchase, may ratify an unauthorized purchase in accordance with rules R-24-109-404-04 and R-24-109-404-05, unless:
 - (i) ratification requires the approval of the executive director or chief procurement officer in accordance with section 24-109-503, C.R.S.;
 - (ii) ratification requires the approval of the executive director or chief procurement officer in accordance with section 24-109-504, C.R.S.; and
 - (iii) the original procurement giving rise to the unauthorized purchase required approval of the executive director or chief procurement officer or a designee of either officer.

R-24-109-404-03 Factors to Be Considered in Ratification of an Unauthorized Purchase.

- (a) The procurement official shall consider all factors related to the procurement including, but not limited to, the following in determining whether to ratify an unauthorized purchase:
 - (i) the facts and circumstances giving rise to the need for the good or service, including the responsible individual's explanation as to why established procedures were not followed, and any lack of information or training on the part of the responsible individual;
 - (ii) indications of intent to deliberately evade established purchasing procedures;
 - (iii) whether the purchase, if it had been made according to established procedures, would have been reasonable (prudent) and appropriate;
 - (iv) the extent to which any competition was obtained;
 - (v) whether this is the first violation or a repeat violation by the responsible individual;
 - (vi) whether appropriate written assurances and safeguards have been established by the purchasing agency to preclude a subsequent unauthorized procurement; and
 - (vii) indications as to whether either the purchasing agency or vendor has acted fraudulently or in bad faith.
- (b) The procurement official shall consider the above factors as they apply to the purposes of section 24-101-102, C.R.S., and fairness to any vendor who has acted fairly and in good faith.

R-24-109-404-04 Purchasing Agency Actions - Ratification of Individual's Action

In addition to the action required in rule R-24-109-404-05, after consideration of the factors in rule R-24-109-404-03, the procurement official may take one of the following actions.

- (a) If the procurement official determines that the responsible individual operated in good faith, the procurement official may ratify the actions of the responsible individual; or
- (b) If the procurement official determines that the responsible individual operated in bad faith, the procurement official shall not ratify the actions of the responsible individual.

R-24-109-404-05 Purchasing Agency Actions - Ratification of Contract

In addition to the action required in rule R-24-109-404-04, and after consideration of the factors in rule R-24-109-404-03, the procurement official may take one of the following actions.

- (a) The procurement official may ratify the contract and authorize payment if the procurement official determines:
 - (i) contractor acted in good faith;
 - (ii) procurement meets substantive requirements of the code; and
 - (iii) violation is only procedural.
- (b) The procurement official may ratify the contract and authorize payment if the procurement official determines:
 - (i) contractor acted in good faith;
 - (ii) procurement does not meet substantive requirements of the code; and
 - (iii) ratification is in best interest of state.
- (c) The procurement official shall not ratify the contract, but may authorize payment in an amount equal to lesser of amount agreed to in unauthorized purchase or contractor's actual, documented expenses and reasonable profit as determined by the procurement official, when the conditions are:
 - (i) contractor acted in good faith;
 - (ii) procurement does not meet substantive requirement of the code; and
 - (iii) ratification is not in best interest of state.
- (d) The procurement official shall not ratify the contract or authorize payment if the procurement official determines that the contractor acted in bad faith.

R-24-109-404-06 Purchasing Agency Actions - In the Event of Denial

- (a) In the event the procurement official refuses to ratify the unauthorized procurement, he or she shall notify:

- (i) the responsible individual, the state controller and the controller for the purchasing agency, that ratification is denied, and that the responsible individual(s) may be held personally liable for payment;
 - (ii) the affected vendor(s) that the state has denied responsibility for the purchase, in whole or in part, as determined in the ratification review process; and
 - (iii) the chief procurement officer, if the determination is made by a procurement official.
- (b) In the event a court action is filed involving a procurement that is undergoing a ratification review, the ratification process shall cease and the matter shall be referred to the attorney general.

R-24-109-404-07 Written Determination

A written determination setting forth the basis for the decision shall be made and included in the procurement record.

PART 5 REMEDIES

ARTICLE 110 INTERGOVERNMENTAL RELATIONS

PART 1 DEFINITIONS

PART 2 COOPERATIVE PURCHASING

R-24-110-201 Cooperative Purchasing

The chief procurement officer or his or her designee may approve the purchase of goods or services in accordance with section 24-110-201(2), C.R.S., if such purchase is in the best interests of the state, after considering: (1) the interests of Colorado vendors; (2) the competitiveness of pricing under the cooperative procurement; (3) the ability to effectively meet the state's business needs; (4) the efficiencies and cost savings of using the cooperative procurement, beyond the savings and administrative convenience achieved from not having to comply with article 103 of the code; and (5) the purposes of the code, as set forth in section 24-101-102, C.R.S.

- (a) The procurement official shall make the request through the chief procurement officer or his or her designee addressing the considerations set forth above.
- (b) The chief procurement officer or his or her designee may approve a single purchase, make a conditional approval, or approve participation in an on-going program with the external procurement activity or the local public procurement unit. Participation in a cooperative purchasing agreement is limited to the term approved by the chief procurement officer or his or her designee or the term of the agreement, whichever is shorter.

R-24-110-207.5 Definition

"Public benefit nonprofit entity" means an organization that:

- (a) Is exempt from federal taxation under 26 U.S.C. section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended;
- (b) Does not possess 501 (c) (4) status under the federal "Internal Revenue Code of 1986", as amended, 26 U.S.C. section 501 (c) (4); and
- (c) Receives funds from federal, state, or local governmental sources.

PART 3 CONTRACT CONTROVERSIES

**ARTICLE 111 PREFERENCES IN AWARDING CONTRACTS - FEDERAL ASSISTANCE
 REQUIREMENTS**

ARTICLE 112 EFFECTIVE DATE - APPLICABILITY

R-24-112-101-01 Effective Date - Applicability

Rules implementing the Colorado Procurement Code, as amended by HB17-1051, shall become effective October 1, 2018. All contracts solicited or entered into after October 1, 2018, shall be in accordance with the Code and these rules.

COLORADO PROCUREMENT RULES

Editor's Notes

History

Rules R-24-103-01, R-24-103-202a-10, R-12-103-202.5, R-24-103-204-03 eff. 11/01/2007.

Rule R-24-103-204-03(a) emer. rule eff. 08/13/2010; expired 12/11/2010.

Rules R-24-102-206, R-24-103-101-01, R24-103-202b-01, R-103-202.3, R-24-103-402-01, R-24-111-102-02 eff. 01/01/2014.

Entire rule eff. 08/31/2015.

Rule R-24-105-301, Appendix A emer. rules eff. 11/18/2015; expired 03/17/2016.

Entire rule eff. 10/01/2018.