Colorado Legislative Council Staff

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STATE PROCUREMENT AND CONTRACTING

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The purchase of goods and services by most executive branch agencies in Colorado is generally governed by the state procurement code and rules (code and rules).[1] The code and rules are designed to ensure the fair treatment of people seeking to do business with the state, to foster broad-based competition through a bidding process, and to save money on purchases made with state funds. This *issue brief* outlines the agencies and types of purchases subject to the code and rules, explains the vendor selection process, discusses bidding and contracting for construction projects, and describes the types of preference that exist for awarding contracts. More information can be found at the following website: www.colorado.gov/pacific/osc/spo

Procurement

Agencies subject to state procurement code and rules. Under current law, executive branch agencies are required to follow the code and rules. Political subdivisions of the state may adopt any or all of the code and rules. The judicial and legislative branches are not required to follow the code and rules; however, some judicial branch offices participate in the state procurement system. Procurement policy and rule-making for participating state agencies is overseen by the Department of Personnel and Administration (DPA).

Participating higher education institutions. Higher education institutions may opt out of the state procurement code and rules. For example, while the Colorado Community College System participates in the state procurement system, the University of Colorado System operates its own online bidding system for the procurement of goods and services. The remaining public higher education institutions use the same online system used by many local governments in Colorado for the procurement of goods and services. Unless exempted, higher education institutions use a state system to contract for construction and professional services.

Purchases subject to code and rules. The code and rules apply in most purchasing situations, with the exception of purchases for road and bridge construction, public printing, goods for public resale, intergovernmental agreements, or in the case of emergencies. The purchase of professional services is also typically exempt from procurement rules. State agencies use three main types of procurement:

- contracts for a specific quantity of goods or services at a specified price;
- price agreements for unknown quantities of goods and services at a specified, per-unit price. DPA negotiates, manages, and maintains price agreements for commonly sourced items such as office supplies and computers. Price agreements can be used by state departments, higher education institutions, local governments, and certified nonprofits; and
- small purchases of one-time or low dollar value items made with a procurement card or purchase order.

Vendor selection and competition. A number of formal and informal methods exist for selecting vendors. These methods vary based on the anticipated value or type of procurement. Small purchases and emergency procurements are typically done on an informal basis without public notice or competition. Competition is encouraged in the case of

[1] Articles 101 to 112 of Title 24, C.R.S. and 1 CCR 101-109

emergency procurements. A purchase order or agreement order or agreement is required for purchases of more than $5,000. Competitive bidding is required for goods valued at more than $10,000, or construction and services valued at more than $25,000, unless the state can document that only one vendor is qualified to be the "sole source." Depending on the dollar amount of the procurement, competition can range from issuing documented quotes to issuing a request for proposals through the state's electronic procurement system, Colorado Vendor Self Service (VSS), www.colorado.gov/vss.

Awarding contracts. Small purchases where no competition is required typically do not include a formal award. Larger procurements may be awarded using the following solicitation methods:

- *Documented quotes* (up to $150,000 for goods and services);
- *Invitation for bids* (more than $150,000 for goods and services); and
- *Request for proposals* (more than $150,000, usually for services).

Large procurements may be awarded based on the lowest-price bid or for proposals deemed most advantageous to the state, taking into consideration price and other factors.

Bidding and Contracting for Large Construction Projects

State laws governing contracting for construction projects costing more than $500,000 are separate from the code and rules.[2] There are three types of bids used to solicit services for large construction projects:

- *Competitive sealed bids, low responsible bidder.* Contracts are awarded to the entity that submits the lowest bid in compliance with listed requirements and within the plans and specifications for a project;

- *Competitive sealed bids, best value.* Best value bids allow the entity soliciting bids to consider factors other than cost when awarding a bid, such as a vendor's employment practices or reliability. After a contract is awarded, an agency must publicize the information it used to make the bid selection; and

- *Integrated project delivery (IPD) or design/build contracting.* The IPD approach allows for a contractual agreement between an agency and a single entity for all of the services required for a public project, such as demolition, design, and construction. An agency may use requests for qualifications to pre-qualify bidders for a project. The entity selecting this method of bidding must publicly disclose its rationale for selecting this project delivery approach.

The law requires that Colorado residents be used to perform at least 80 percent of the work on a large construction project, unless a bidder can justify that there is insufficient Colorado labor to perform the work.

Preference Programs

Colorado law establishes purchasing preferences in situations where two or more competing bids are tied for low cost, and as a means to consider factors other than cost when awarding contracts for goods and services.

Preference for resident bidders. Colorado has a "low-tie bid" law, meaning that if a resident and nonresident vendor offer equal low bids, the award is made to the resident bidder.

Reciprocity laws. Some states, including Colorado, penalize out-of-state vendors if a vendor's home state grants a percent discount to its resident bidders. States with reciprocity laws inflate bids from out-of-state vendors by a percent equal to the discount allowed by the home state.

Preference for specific groups. Several states have procurement preferences for specific groups. These preferences are independent of any federal or state assistance programs. Group preferences may include noncompetitive set-asides, which allow states to prioritize bids from certain groups. Colorado has a set-aside program that prioritizes the purchase of certain products from nonprofit agencies that employ people with severe disabilities. Colorado also has a goal of awarding at least 3 percent of all procurement contracts by dollar value to service-disabled veteran-owned small businesses. In an effort to reach this goal, state agencies may give a 5 percent preference to bids submitted by this group.

[2]Articles 91 to 93 of Title 24, C.R.S.