

Title 24. Section 92 GOVERNMENT - STATE

24-92-101. Short title.

This article shall be known and may be cited as the "Construction Bidding for Public Projects Act".

Source: L. 81: Entire article added, p. 1254, § 1, effective July 1.

24-92-102. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Agency of government" means any agency, department, division, board, bureau, commission, institution, or section of this state which is a budgetary unit exercising construction contracting authority or discretion.
- (2) "Construction contract" or "contract" means any agreement for building, altering, repairing, improving, or demolishing any public project of any kind. For the purposes of this article, the terms include capital construction and controlled maintenance, as defined in section 24-30-1301.
- (3) "Cost" means the total cost of labor, materials, provisions, supplies, equipment rentals, equipment purchases, insurance, supervision, engineering, clerical, and accounting services, the value of the use of equipment, including its replacement value, owned by a state agency, and reasonable estimates of other administrative costs not otherwise directly attributable to the public project which may be reasonably apportioned to such project in accordance with generally accepted cost accounting principles and standards.
- (4) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this article.
- (5) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (6) "Low responsible bidder" means any contractor who has bid in compliance with the invitation to bid and within the requirements of the plans and specifications for a public project, who is the low bidder, and who has furnished bonds or their equivalent as required by law.
- (7) "Project description" means the words used in a solicitation to describe the construction to be performed, and includes specifications attached to, or made a part of, the solicitation.
- (8) (a) "Public project" means any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any maintenance programs for the upkeep of such projects.

(b) Except as provided in paragraph (c) of this subsection (8), "public project" does not include any project for which appropriation or expenditure of funds may be reasonably expected not to exceed one hundred fifty thousand dollars in the aggregate for any fiscal year. Nothing in this paragraph (b) shall affect the requirements for the delivery of bonds or security pursuant to sections 24-105-202, 38-26-105, and 38-26-106, C.R.S.

(c) "Public project" does not include any project under the supervision of the department of transportation for which appropriation or expenditure of funds may be reasonably expected not to exceed one hundred fifty thousand dollars in the aggregate of any fiscal year.

- (9) "Responsible officer" means the person having overall contract administration responsibility for an agency of government.

Source: L. 81: Entire article added, p. 1254, § 1, effective July 1. L. 98: (8) amended, p. 1042, § 1, effective August 5. L. 2001: (8)(b) amended, p. 214, § 1, effective August 8.

24-92-103. Construction of public projects – competitive sealed bidding.

- (1) All construction contracts for public projects shall be awarded by competitive sealed bidding except as otherwise provided in section 24-92-104.
- (2) An invitation for bids shall be issued and shall include a project description and all contractual terms and conditions applicable to the public project.
- (3) Adequate public notice of the invitation for bids shall be given at least fourteen days prior to the date set forth therein for the opening of bids, pursuant to rules. Such notice may include publication by electronic on-line access pursuant to section 24-92-104.5 or in a newspaper of general circulation at least fourteen days prior to bid opening.
- (4) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rules, together with the name of each bidder, shall be entered on a record, and the record shall be open to public inspection. After the time of the award, all bids and bid documents shall be open to public inspection in accordance with the provisions of sections 24-72-203 and 24-72-204.
- (5) Bids shall be unconditionally accepted, except as authorized by subsection (7) of this section. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in the evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs.
- (6) Withdrawal of inadvertently erroneous bids before the award may be permitted pursuant to rules if the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that an error was made. Except as otherwise provided by rules, all decisions to permit the withdrawal of bids based on such bid mistakes shall be supported by a written determination made by the responsible officer.
- (7) The contract shall be awarded with reasonable promptness by written notice to the low responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event that all bids for a construction project exceed available funds, as certified by the appropriate fiscal officer, the responsible officer is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsible bidder in order to bring the bid within the amount of available funds; except that the functional specifications integral to completion of the project may not be reduced in scope, taking into account the project plan, design, and specifications and quality of materials.

Source: L. 81: Entire article added, p. 1255, § 1, effective July 1. L. 98: (3) amended, p. 1097, § 11, effective June 1.

Annotation

Law reviews. For article, "The Potential and Perils of Colorado Public Construction Contracting", see 16 Colo. Law. 2131 (1987). For article, "Post-Award Bid Shopping in the Colorado Public Construction Industry", see 18 Colo. Law. 1739 (1989).

24-92-104. Exemptions – applicability.

(1) The provisions of section 24-92-103 shall not apply to:

(a) A public project for which the agency of government receives no bids or for which all bids have been rejected; or

(b) A situation for which the responsible officer determines it is necessary to make emergency procurements or contracts because there exists a threat to public health, welfare, or safety under emergency conditions, but such emergency procurements or contracts shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(c) Contracts for architectural, engineering, land surveying, and landscape architectural services as provided for in part 14 of article 30 of this title.

(2) Nothing in this article shall be construed to affect or limit any additional requirements imposed upon an agency of government for awarding contracts for public projects.

(3) This article shall not apply to any county, municipality, school district, special district, or political subdivision of the state and shall not be construed to affect any requirements which may otherwise apply to such entities for awarding contracts for public projects, except as provided in section 24-92-109.

Source: L. 81: Entire article added, p. 1256, § 1, effective July 1.

Annotation

Law reviews. For article, "The Potential and Perils of Colorado Public Construction Contracting", see 16 Colo. Law. 2131 (1987).

24-92-104.5. Solicitation of bids by electronic on-line access – department of transportation.

The executive director of the department of transportation may invite bids using electronic on-line access, including the internet, for purposes of acquiring construction contracts for public projects on behalf of the department of transportation.

Source: L. 98: Entire section added, p. 1097, § 12, effective June 1.

24-92-105. Cancellation of invitations for bids.

An invitation for bids or any other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation when it is in the best interests of the agency of government. The reasons for any cancellation or rejection shall be made part of the contract file.

Source: L. 81: Entire article added, p. 1256, § 1, effective July 1.

24-92-106. Responsibility of bidders and offerors.

- (1) A written determination of nonresponsibility of a bidder or offeror shall be made pursuant to rules. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.
- (2) Information furnished by a bidder or offeror pursuant to this section shall not be disclosed without prior written consent by the bidder or offeror.

Source: L. 81: Entire article added, p. 1256, § 1, effective July 1.
Prospective contractors may be prequalified for particular types of construction, and the method of compiling a list of and soliciting from such potential contractors shall be pursuant to rules.

Source: L. 81: Entire article added, p. 1257, § 1, effective July 1.

24-92-108. Types of contracts.

Subject to the limitations of this section, any type of contract which will promote the best interests of the agency of government may be used; except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the agency of government than any other type of contract or that it is impracticable to obtain the construction required unless the cost-reimbursement contract is used.

Source: L. 81: Entire article added, p. 1257, § 1, effective July 1.

24-92-109. Agency of government to submit cost estimate.

- (1) Whenever an agency of government proposes to undertake the construction of a public project reasonably expected to cost in excess of fifty thousand dollars by any means or method other than by a contract awarded by competitive bid, it shall prepare and submit a cost estimate in the same manner as other bidders; except that, for projects under the supervision of the department of transportation undertaken by such means or method, the department shall prepare and submit a cost estimate if the project is reasonably expected to exceed one hundred fifty thousand dollars. Cost estimates in excess of fifty thousand dollars but less than or equal to one hundred fifty thousand dollars shall be submitted to the transportation commission on at least a quarterly basis for its review and approval. Such agency of government itself may not undertake the proposed project unless it shows the lowest cost estimate.
- (2) In preparing such cost estimate, the agency of government shall preserve a full, true, and accurate record of the cost of such project. Such records shall be kept and maintained by the responsible officer on behalf of the agency of government. To the extent the agency of government contracts with any other state or local government agency in connection with a public project, such other agency shall provide all necessary data or information to enable the agency of government to document a full, true, and accurate record of the cost of such project, which data or information shall be kept in an orderly manner by the agency of government for a period of at least six years after completion of the project. All such records shall be considered public records and shall be made available for public inspection.
- (3) State agencies shall not be required to be bonded when performing the work on a public project.

Source: L. 81: Entire article added, p. 1257, § 1, effective July 1. L. 98: (1) amended, p. 1042, § 2, effective August 5.

24-92-110. Rules and regulations.

The executive director of the department of personnel shall promulgate rules and regulations which are designed to implement the provisions of this article; except that the executive director of the department of transportation shall promulgate rules and regulations relating to bridge and highway construction bidding practices including, notwithstanding any other provisions of this article, rules governing debarment of contractors. The rules shall include provisions requiring agencies of government to keep certain public project records, even if duplicative, in accordance with generally accepted cost accounting principles and standards.

Source: L. 81: Entire article added, p. 1257, § 1, effective July 1. L. 83: Entire section amended, p. 1025, § 1, effective April 21. L. 84: Entire section amended, p. 293, § 3, effective April 30. L. 91: Entire section amended, p. 1068, § 38, effective July 1. L. 95: Entire section amended, p. 661, § 90, effective July 1.

Cross references: For the legislative declaration contained in the 1995 act amending this section, see section 112 of chapter 167, Session Laws of Colorado 1995.

24-92-111. Audit.

If any agency of government is alleged to be in violation of or in material noncompliance with this article or the rules and regulations promulgated thereunder, the legislative audit committee shall be advised, in writing, of the activities alleged to be in violation or noncompliance. The legislative audit committee shall give notice to the agency, which shall have ten days to respond to such allegation. If the said committee thereafter determines that there is a reasonable probability of a violation or material noncompliance, the committee shall take appropriate action and may direct the state auditor to conduct an audit and review of the records being kept by such agency. If the state auditor determines that the agency has violated or has not complied or is not complying with this article or the rules and regulations promulgated thereunder, a written report shall be issued to the agency detailing the areas of violation or noncompliance and curative recommendations. The agency shall implement the recommendations of the state auditor within a time period set by him not to exceed six months.

Source: L. 81: Entire article added, p. 1257, § 1, effective July 1.

24-92-112. Finality of determinations.

The determinations required by sections 24-92-103 (6), 24-92-104, 24-92-106 (1), and 24-92-108 are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

Source: L. 81: Entire article added, p. 1258, § 1, effective July 1.

24-92-113. Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

Source: L. 81: Entire article added, p. 1258, § 1, effective July 1.

Annotation

Law reviews. For article, "Post-Award Bid Shopping in the Colorado Public Construction Industry", see 18 Colo. Law. 1739 (1989).

24-92-114. Prohibition of dividing work of public project.

It is unlawful for any person to divide a work of a public project into two or more separate projects for the sole purpose of evading or attempting to evade the requirements of this article.

Source: L. 81: Entire article added, p. 1258, § 1, effective July 1.